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Nos. 82-1860 and 82-1862

In The

Supreme Court of the United States

October Term, 1983

SCHNEIDER MOVING & STORAGE COMPANY, *Petitioner,*
and
PROSSER'S MOVING AND STORAGE COMPANY, *Petitioner,*

vs.

LORAN W. ROBBINS, MARION M. WINSTEAD, HAROLD J. YATES, ROBERT J. BAKER, HOWARD MCDOUGALL, THOMAS F. O'MALLEY, AND R. V. PULLIAM, TRUSTEES OF THE CENTRAL STATES, AND SOUTHEAST AND SOUTHWEST AREAS PENSION FUND, A PENSION TRUST, *Respondents,*
and
LORAN W. ROBBINS, MARION M. WINSTEAD, HAROLD J. YATES, ROBERT J. BAKER, HOWARD MCDOUGALL, THOMAS F. O'MALLEY, AND R. V. PULLIAM, TRUSTEES OF THE CENTRAL STATES, AND SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE, A HEALTH AND WELFARE TRUST, *Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

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PETITIONS FOR CERTIORARI FILED MAY 17, 1983.
CERTIORARI GRANTED AND CASES CONSOLIDATED OCTOBER 3, 1983.

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Nos. 82-1860 and 82-1862

In The

Supreme Court of the United States

October Term, 1983

SCHNEIDER MOVING & STORAGE COMPANY, *Petitioner,*

and

PROSSER'S MOVING AND STORAGE COMPANY, *Petitioner,*

vs.

LORAN W. ROBBINS, et al., *Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Date	Proceedings
	District Court Docket Entries in No. 82-1860 (Schneider)
4/21/80	Plaintiff's Complaint filed in the United States District Court for the Eastern District of Missouri, Eastern Division.
6/ 5/80	Answer of Defendant Schneider filed.
10/20/80	Defendant Schneider's Motion to Dismiss filed.
11/ 7/80	Memorandum and Order of Dismissal entered.
12/ 2/80	Plaintiffs' Notice of Appeal filed.

District Court Docket Entries in No. 82-1862 (Prosser's)

3/19/80	Plaintiffs' Complaint filed in U. S. District Court for Eastern District of Missouri, Eastern Division.
5/ 8/80	Defendant Prosser's Answer filed.
9/ 2/80	Defendant Prosser's Motion to Dismiss or for Summary Judgment filed.
11/ 7/80	Memorandum and Order of Dismissal filed.
12/ 2/80	Plaintiffs' Notice of Appeal filed.

Court of Appeals Docket Entries (Consolidated Cases)

3/24/82	Opinion with Dissent, and Judgment of the Court of Appeals for the Eighth Circuit filed.
4/ 7/82	Petition for Rehearing *en banc* filed.
6/ 4/82	Order granting Petition for Rehearing *en banc* granted.
2/16/83	Opinion, with Dissent, and Judgment of the Court of Appeals for the Eighth Circuit filed.
3/14/83	Judgment of Court of Appeals entered.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Civil Cause No. 80-0535-C(B)

LORAN W. ROBBINS, MARION M. WINSTEAD, HAROLD J. YATES, ROBERT J. BAKER, HOWARD McDOUGALL, THOMAS F. O'MALLEY and R. V. PULLIAM, the present trustees of CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND, a pension trust,

and

LORAN W. ROBBINS, MARION M. WINSTEAD, HAROLD J. YATES, ROBERT J. BAKER, HOWARD McDOUGALL, THOMAS F. O'MALLEY AND R. V. PULLIAM, the present trustees of CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND, a health and welfare trust,

Plaintiffs,

vs.

SCHNEIDER MOVING AND STORAGE COMPANY, a Missouri corporation,

Defendant.

COMPLAINT

(Filed April 21, 1980)

Now come the Plaintiffs, by their attorneys, LaTourette and Weyerich, by Donald J. Weyerich and as and for a cause of action against the Defendant allege and show to the Court as follows:

I.

JURISDICTION

1. Jurisdiction of this Court is founded upon: Section 301(a) of the Labor Management Relations Act of

1947, as amended, (29 USC Section 185 (a)); and Section 502 of the Employee Retirement Income Security Act of 1974 (29 USC 1132) in that the Plaintiffs are aggrieved by the Defendant's violation of the Collective Bargaining Agreements, Pension Plan and Pension Agreement and the Defendant's continued refusal to comply with certain terms of Collective Bargaining Agreements and Trust Plan and Trust Agreement of the Central States, Southeast and Southwest Areas Pension Fund and the Central States, Southeast and Southwest Areas Health and Welfare Fund thereby violating the provisions of the Employee Retirement Income Security Act of 1974, the terms and provisions of the employee benefit plans, Section 301 of the Labor Management Relations Act of 1947 and the Common Law of the State of Missouri.

II.

PARTIES

2. Plaintiffs Loran W. Robbins, Marion M. Winstead, Harold J. Yates, Robert J. Baker, Howard McDougall, Thomas F. O'Malley and R. V. Pulliam, hereinafter referred to as "The Trustees" are trustees of the Central States, Southeast and Southwest Areas Pension Fund, a common law pension trust established by trust agreement and an employee benefit plan, with its principal place of business in Chicago, Illinois, hereinafter referred to as "The Pension Fund"; and bring this action on behalf of the Trustees, their predecessors and/or successors, and the participants and beneficiaries of the Pension Fund, and the Pension Fund.

3. Plaintiffs Loran W. Robbins, Marion M. Winstead, Harold J. Yates, Robert J. Baker, Howard Mc-

Dougall, Thomas F. O'Malley and R. V. Pulliam, hereinafter referred to as "The Trustees" are the trustees of the Central States, Southeast and Southwest Areas Health and Welfare Fund, a common law health and welfare trust, established by trust agreement and an employee benefit plan, with its principal place of business in Chicago, Illinois, hereinafter referred to as "The Health and Welfare Fund"; and bring this action on behalf of the Trustees, their predecessors and/or successors, and the participants and beneficiaries of the Health and Welfare Fund, and the Health and Welfare Fund.

4. Defendant Schneider Moving and Storage Company, a Missouri corporation, is a citizen of the State of Missouri, a public mover, with its office and principal place of business at 6400 Spencer Place, and is transacting business within the County of St. Louis, State of Missouri.

III.

NATURE OF CLAIMS

5. Defendant is an employer and a party in interest in an industry affecting commerce within the meaning of Section 3 (5), (11), (12) and (14) of the Employee Retirement Income Security Act of 1974 (29 USC 1002 (5), (11), (12) and (14)) and the Labor Management Relations Act of 1947 (29 USC 151 *et seq.*).

For all times relevant herein, Defendant was a party to and agreed to abide by the terms of Collective Bargaining Agreements between itself and Local Union No. 610, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of

America which is a labor organization that represented for the purpose of collective bargaining certain employees of Defendant and employees of other employers in industries affecting interstate commerce within the meaning of Sections 2 (5), 9 (a), and 301 (a) of the Labor Management Relations Act of 1947, as amended (29 USC 151 *et seq.*).

6. That on or about March 1, 1970, Defendant entered into a Master Agreement for Public Movers of the Greater Metropolitan St. Louis and St. Louis County areas of Missouri for the period March 1, 1970 through February 28, 1973 (See Exhibit 1) with Local Union No. 610, which Agreement provided for specific payments to the Health and Welfare Fund and Pension Fund for each employee covered by said Agreement.

7. That on or about March 1, 1973, Defendant entered into a Master Agreement for Public Movers of the Greater Metropolitan St. Louis and St. Louis County areas of Missouri for the period March 1, 1973 through February 28, 1976 (See Exhibit 2) with Local Union No. 610, which Agreement provided for specific payments to the Health and Welfare Fund and Pension Fund for each employee covered by said Agreement.

8. That on or about March 1, 1976, Defendant entered into a Master Agreement for Public Movers of the Greater Metropolitan St. Louis and St. Louis County areas of Missouri for the period March 1, 1976 through February 28, 1979 (See Exhibit 3) with Local Union No. 610, which Agreement provided for specific payments to the Health and Welfare Fund and Pension Fund for each employee covered by said Agreement.

9. As provided in the Collective Bargaining Agreements and Pension Trust Agreement (See Exhibit 4 attached hereto), Pension Plan (See Exhibit 5), Health and Welfare Trust Agreement (See Exhibit 6), Joint Application (See Exhibit 7) and Participation Agreement (See Exhibit 8), Plaintiffs, as Trustees aforesaid, are required to receive, hold and manage all monies required to be contributed to Central States, Southeast and Southwest Areas Health and Welfare and Pension Funds in accordance with the provisions of the then applicable Collective Bargaining Agreement, as a Trust Fund, for the uses and purposes set forth in the Agreement and Pension Trust Agreement and Welfare Trust Agreements governing the Fund to which the contributions are made.

10. By virtue of provisions contained in the Collective Bargaining Agreements to which Defendant was bound, Defendant did promise and become obligated to make contributions, in amounts set forth therein, to said Pension and Health and Welfare Funds on behalf of its employees for each hour worked or for which wages were received by such employees.

Defendant agreed that all amounts required to be paid into the said Pension and Health and Welfare Funds, as above set forth, shall be paid not later than the 15th day of the month next succeeding the month in which an employee covered by the collective bargaining agreement worked or received wages.

Defendant further agreed to furnish to the Trustees of the Central States, Southeast and Southwest Areas Pension and Health and Welfare Funds in each month, not later than the 15th day of the month next succeeding, a monthly contribution report, setting forth therein:

(a) the names and social security numbers of employees

(b) hours for which wages were received by the employee

(c) contributions required to be made on behalf of each employee

or in such cases where no employee worked or received wages, a statement to that effect and indicating no contributions were required to be made for such period.

Each Employer bound by the collective bargaining agreement has agreed that a failure by an Employer to make payment of contributions required to be made thereunder shall constitute a violation of said agreement by such Employer.

11. Pursuant to provisions contained in the Collective Bargaining Agreement and Health and Welfare and Pension Trust Agreements, the Trustees acting thereunder are authorized and empowered to examine and copy the payroll books and records of an Employer to permit such Trustees to determine whether an Employer is making full payment as required under the applicable Collective Bargaining Agreement.

It is further provided therein, that in the event upon an audit made by the Trustees and/or upon other evidence it shall be found that an Employer has failed to make all contributions required on such Employer's part to be made, Trustees shall impose the following upon such delinquent Employer:

(a) all costs of such audit shall be paid by such Employer

(b) all costs, expenses, interest on monies due at the rate of 8 percent (8%) per annum, and attorney's fees incurred by the Trustees

12. Notwithstanding the foregoing, Defendant has violated the obligations on Defendant's part undertaken, in that the Defendant has failed:

To allow the Trustees to make proper audit of Defendant's payroll books and records to determine amounts due to Central States, Southeast and Southwest Areas Pension Fund and Central States, Southeast and Southwest Areas Health and Welfare Fund.

To furnish to the Trustees of Central States, Southeast and Southwest Areas Pension Fund and Central States, Southeast and Southwest Areas Health and Welfare Fund the required monthly statement as required by the collective bargaining agreement.

In addition to the foregoing, Defendant has repeatedly failed to make contribution reports and the required payments thereon upon their respective due dates.

13. By the above described omissions and breaches of Agreement by the Defendant:

The Trustees of the Central States, Southeast and Southwest Areas Pension Trust Fund may be required to deny the employee-beneficiaries of such fund, for whom required contributions have not been made, the benefits provided thereunder, thereby causing to such employee-beneficiary substantial and irreparable damage.

The Trustees of the Central States, Southeast and Southwest Areas Health and Welfare Fund will be required to provide to employees of Defendant benefits provided thereunder notwithstanding the failure of Defendant to make required contributions thereto, thereby reducing the corpus of such Fund and endangering the rights of employee-beneficiaries there-

under on whose behalf contributions are being made, all to their substantial and irreparable injury.

14. Plaintiffs, in their behalf and on behalf of all employees for whose benefit the Central States, Southeast and Southwest Areas Pension Fund and Central States, Southeast and Southwest Areas Health and Welfare Fund have been established, have requested Defendant to perform its obligations, but Defendant has refused and failed to perform as herein alleged.

15. Plaintiffs are without an adequate remedy at law and will suffer immediate, continuing and irreparable injury, loss and damage unless Defendant is ordered to specifically perform all obligations on Defendant's part required to be performed under the Collective Bargaining Agreements, Pension Agreement, Health and Welfare Trust Agreement, Joint Application and Participation Agreement, and is restrained from continuing to refuse to perform as thereunder required.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand the following relief:

1. That an account be taken as to all employees of Defendant covered by the Collective Bargaining Agreement, as to wages received and hours worked by such employees to determine amounts required to be paid to the Trustees of the Central States, Southeast and Southwest Areas Health and Welfare and Pension Funds, covering the periods for which the collective bargaining agreements are effective.

2. That Defendant be decreed to pay to the Trustees of the Central States, Southeast and Southwest Areas

Health and Welfare and Pension Funds all sums determined to be due, together with interest on all monies due at the rate of 8 percent (8%) per annum.

3. That Defendant be specifically required to perform and continue to perform all obligations on Defendant's part undertaken, particularly to furnish to the Trustees of Central States, Southeast and Southwest Areas Pension and Health and Welfare Funds the required monthly contribution report heretofore referred to, or in lieu thereof, a statement covering the period for which said report is required that Defendant had no employees for whom contributions are required to be made.

4. That Defendant be decreed to pay all costs attendant to any audit of Defendant's payroll books and records.

5. That Defendant be decreed to pay to the Trustees their reasonable attorney's fees all as in the Health and Welfare and Pension Trust Agreements.

6. Plaintiffs have such other and further relief as by the Court may be deemed just and equitable, all at Defendant's costs.

LaTOURETTE AND WEYERICH

By /s/ Donald J. Weyerich #20191
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(Exhibits omitted in printing, except for exhibits 3 and 4 and excerpts from exhibits 1 and 2, printed below.)

EXCERPT FROM PLAINTIFFS' EXHIBIT 2, ATTACHED TO PLAINTIFFS' COMPLAINT AGAINST SCHNEIDER—SECTION 12.2 OF COLLECTIVE BARGAINING AGREEMENT EFFECTIVE MARCH 1, 1973 TO FEBRUARY 28, 1976

• • • •

Section 12.2. A new employee without previous experience in the Moving Industry in St. Louis may be hired at the rate of 80¢ per hour less than the scale for the classification of work for which hired, provided that his hourly rate is adjusted automatically 10¢ an hour upon the completion of every 30 calendar days of employment until the classification rate of Section 12.1 is attained. An employee with work experience with companies which are members of this Association, when referred by the Union, shall be paid at the rate stated for his classification.

Casual, temporary, or part-time employees, exclusive of employees who regularly report to the union employment office, may be hired at the rate of $2.50 per hour. A casual or temporary employee is one who, hired for the day, and without promise of continued employment, is terminated upon the completion of the day. A part-time employee is one who normally has a regular job elsewhere. A seasonal employee may be hired at the rate of $2.50 per hour for his first season with the Industry, $2.75 per hour for his second season with the Industry, $3.00 an hour for his third season with the Industry, and $3.25 an hour for his (sic) fourth season with the Industry. A seasonal employee is one, such as a student, who is hired for a seasonal period customarily between May 15th and September 15th. With respect to seasonal employees the company agrees that,

within 31 days following employment a seasonal employee shall not be permitted to work unless, or until, he submits to the company official proof supplied by the Union that he has become a member or has applied for membership in the Union.

• • • •

EXCERPT FROM PLAINTIFFS' EXHIBIT 1, ATTACHED TO PLAINTIFFS' COMPLAINT AGAINST SCHNEIDER—SECTION 12.2 OF COLLECTIVE BARGAINING AGREEMENT EFFECTIVE MARCH 1, 1970 TO FEBRUARY 28, 1973

• • • •

Section 12.2. A new employee without previous experience in the Moving Industry in St. Louis may be hired at the rate of 80¢ per hour less than the scale for the classification of work for which hired, provided that his hourly rate is adjusted automatically 10¢ an hour upon the completion of every 30 calendar days of employment until the classification rate of Section 12.1 is attained.

Casual, temporary, seasonal, or part-time employees may be hired at the rate of $2.00 per hour. A casual or temporary employee is one who, hired for the day, and without promise of continued employment, is terminated upon the completion of the day. A seasonal worker is one, such as a student, who is hired for a seasonal period customarily between May 15 and September 15. A part-time worker is one who normally has a regular job elsewhere.

An employee with work experience with companies which are members of this Association, when referred by the Union, shall be paid at the rate stated for his classification. The Company agrees that, within 31 days following employment, a seasonal employee shall not be permitted to work unless or, until he submits to the Company official proof supplied by the Union that he has become a member, or has applied for membership, in the Union.

• • • •

REVISED AND AMENDED TRUST AGREEMENT FOR CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND

This AGREEMENT and DECLARATION of TRUST, made and entered into this sixteenth day of March, 1955, by and between CENTRAL CONFERENCE OF TEAMSTERS, SOUTHERN CONFERENCE OF TEAMSTERS, and their affiliated Local Unions, hereinafter referred to collectively as the "UNION" and the SOUTHEASTERN AREA MOTOR CARRIERS LABOR RELATIONS ASSOCIATION; SOUTHWEST OPERATORS ASSOCIATION; NATIONAL AUTOMOBILE TRANSPORTERS LABOR COUNCIL; MOTOR CARRIERS EMPLOYERS CONFERENCE—CENTRAL STATES; CARTAGE EMPLOYERS MANAGEMENT ASSOCIATION; CLEVELAND DRAYMEN ASSOCIATION, INC.; and NORTHERN OHIO MOTOR TRUCK ASSOCIATION, INC.; for and on behalf of themselves, their constituent members, and such other Employers

who are or may become parties hereto, hereinafter collectively referred to as the "EMPLOYER" and the individual Trustees, hereinafter referred to as the "TRUSTEES" selected as hereinafter described, accepting the Trust obligations herein declared:

WITNESSETH:

WHEREAS, the Union and the Employer believe that it is in the best interest of the Employees of such Employer represented by the Union, and the families and dependents of such Employees, to provide for retirement benefits and for that purpose to establish a Trust Fund as hereinafter provided; and

WHEREAS, the Union and the Employer have heretofore entered into collective bargaining agreements under the terms of which it is provided that the Employer shall contribute certain agreed-upon sums of money therein set forth to a Pension Fund, which shall be known as the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND; and

WHEREAS, Employee Trustees and Employer Trustees have been designated as the Trustees of the Trust in accordance with the provisions of such Agreement.

NOW THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained, the Union and the Employer hereby accept and adopt all of the provisions herein contained, and the Trustees declare that they will receive and hold the contributions and any other money or property which may come into their hands as Trustees (all such contributions, money and property being hereinafter referred

to as "the Trust Fund"), with the powers and duties, uses, and purposes as hereinafter set forth, to-wit:

ARTICLE I

DEFINITION OF TERMS

Sec. 1. *Employer*—The term "Employer" as used herein shall mean any employer who is bound by a collective bargaining agreement with the Union, or any employer not presently a party to such collective bargaining agreement who satisfies the requirements for participation as established by the Trustees and agrees to be bound by this Agreement.

Sec. 2. *Union*—The term "Union" as used herein shall mean the CENTRAL CONFERENCE OF TEAMSTERS, THE SOUTHERN CONFERENCE OF TEAMSTERS, and their affected affiliated Local Unions, and such other unions as the Trustees may agree upon.

Sec. 3. *Employee* — The term "Employee" as used herein shall include:

(a) A person who is employed under the terms and conditions of a collective bargaining agreement entered into between an Employer as herein defined and a Union as herein defined, and on whose behalf payments are required by such collective bargaining agreement or applicable law to be made to the Fund by the Employer; or

(b) All persons employed by the Union, upon being proposed by the Union and after acceptance by the Trustees; and as to such Union personnel the Union shall be considered an Employer solely for the purposes of contributions within the meaning of this Agreement and Declaration of Trust and shall, on behalf of such personnel, make pay-

ments to the Trust at the times and at the rate of payment equal to that made by any other Employer who is a party to the Trust for the same benefits; or

(c) All persons employed by the Central States, Southeast and Southwest Areas Pension Fund or Central States, Southeast and Southwest Areas Health and Welfare Fund upon acceptance by the Trustees; and as to such Trust personnel the Trustees shall be deemed an Employer, solely for the purpose of contributions, within the meaning of this Agreement and Declaration of Trust and shall, on behalf of such personnel, make payments to the Trust at the times and at the rate of payment equal to that made by any other Employer who is a party to the Trust for the same benefits.

(d) All persons who are Trustees of Central States, Southeast and Southwest Areas Pension Fund or Central States, Southeast and Southwest Areas Health and Welfare Fund upon acceptance by the Trustees, as hereinafter defined; and on behalf of such persons who are Trustees, their Employers shall make or be presently required to make contributions to the Trust at the times and at the rate of payment equal to that required by any other Employer who is a party to the Trust for the same benefits.

(e) In all instances the common law test, or the applicable statutory definition; or master-servant relationship shall control employee status.

(f) The continuation of employee status once established shall be subject to such reasonable rules as the Trustees may adopt according to law.

Sec. 4. *Trustees*—The term "Trustees" or "Board" as used herein shall mean the Trustees designated in this Agreement and Declaration of Trust together with their

successors designated and appointed in accordance with the terms of this Agreement.

Sec. 5. *Trust Fund or Fund*—The term "Trust Fund" or "Fund" as used herein shall refer to all property of whatever nature which shall be in said Trust created by this Agreement.

Sec. 6. *Employer Contributions*—The term "Employer Contributions" as used herein shall mean payments made by Employers to the Trust Fund herein created.

ARTICLE II

CREATION OF TRUST FUND AND BOARD OF TRUSTEES

Sec. 1. *Designation*—The Union and the Employer hereby create and establish, with the Trustees herein provided for, a Trust to be known as the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND which shall be comprised of assets derived from Employer contributions made pursuant to the collective bargaining agreement between the parties (plus any additional sum or sums, from Employer contributions which may hereafter be agreed upon by the Employers and the Union set forth in written collective bargaining agreements), together with all insurance and annuity contracts (including dividends, refunds, or other sums payable to the Trustees on account of such insurance and annuity contracts) and all investments made and held by the Trustees on account of such insurance and annuity contracts, all investments made and held by the Trustees, all moneys received by the Trustees as contributions or as income from investments made and held

by the Trustees or otherwise, and any other property received and held by Trustees for the uses, purposes, and trusts set forth in this Agreement and Declaration of Trust, where any of the foregoing is derived from the Employer contributions.

Sec. 2. *Board of Trustees*—There is hereby created a Board of Trustees consisting of four (4) persons representative of the Employers and four (4) persons representative of the Employees. The Employer Trustees shall be designated as follows: One (1) Trustee shall be designated by each of the following Employer groups, acting either alone or jointly as herein indicated:

A. Southeastern Area Motor Carriers Labor Relations Association and Southwest Operators Association;

B. Cleveland Draymen Association, Inc., Northern Ohio Motor Truck Association, Inc., and Cartage Employers Management Association.

Two (2) Trustees shall be designated by the following Employer group:

C. Motor Carriers Employers Conference—Central States.

The Employee Trustees shall be designated jointly by the Union, as defined in Article I, Section 2 of this Agreement.

Sec. 3. *Term of Trustees*—Each Trustee shall serve as such Trustee until he shall die, become incapable of acting hereunder, resign, become unqualified for the position under applicable law, or be removed as herein provided.

Sec. 4. *Manner of Acting in Event of Deadlock*—In the event a deadlock develops between the Employer and

Employee Trustees, or between the Trustees, the Trustees shall appoint a neutral party empowered to break such deadlock within a reasonable length of time. Such neutral party may be appointed in advance of any such deadlock. In the event the Trustees are unable to agree upon a neutral party, or in the event such neutral party is unable to act, either the Employer or the Employee Trustees may petition the District Court of the United States for the Northern District of Illinois, Eastern Division, for appointment of a neutral person, as provided in Section 302 (c) of the Labor Management Relations Act of 1947, as amended.

• • •

Sec. 6. *Removal of Trustees*—Any Employer Trustee may be removed, with or without cause, at any time by the Employer Association or Group appointing such Employer Trustee; in the event of such removal of such Employer Trustee, the Employer Association or Group removing such Trustees shall appoint a Successor Trustee. Any Employee Trustee may be removed, with or without cause, at any time by the Union. The Trustees shall also have the authority and duty to act to remove a Trustee holding office in violation of law.

• • •

Sec. 9. *Office of the Fund*—The sole and principal office of the Fund shall be in Chicago, Illinois, for the transaction of business of the Fund, the exact location of which is to be made known to the parties interested in such Fund. At such office, and at such other places as may be required by law, there shall be maintained all, or

any of, the books and records pertaining to the Fund and its administration.

Sec. 10. *No One Is Agent Without Written Authority* —No individual or person may act as agent for the Fund unless specifically authorized in writing by the Trustees. No Employer or Union nor any representative of any Employer or Union, in such capacity, is authorized to interpret the Pension Plan, nor can any such person act as agent of the Trustees. Only the Board of Trustees is authorized to interpret the Pension Plan within the scope of its authority.

ARTICLE III

CONTRIBUTIONS AND COLLECTIONS

Sec. 1. *Amount of Contributions*—Each Employer shall make continuing and prompt payments to the Trust Fund as required by the applicable collective bargaining agreement between the parties. The obligation to make such contributions shall continue during periods when the collective bargaining agreement is being negotiated, but such contributions shall not be required in case of strike after contract termination, unless the parties mutually agree otherwise.

Sec. 2. *Time of Payment*—The Trustees shall, by regulation, fix the time of payment for contributions and shall send a copy of such regulations to each Employer required to contribute.

Sec. 3. *Receipt of Payment and Other Property of Trust*—The Trustees are hereby designated as the persons to receive the payments heretofore or hereafter made by the Employers to the Trust Fund, and the Trus-

tees are hereby vested with all right, title and interest in and to such moneys and all interest accrued thereon, and are authorized to receive and be paid the same. The Trustees agree to receive all such payments, deposits, moneys, insurance and annuity contracts, and other assets and properties described or referred to in Article II and this Article, and to hold same in Trust hereunder for the uses and purposes of the Trust herein created.

Sec. 4. *Collections and Enforcement of Payment*—The Trustees, or such committee of the Trustees as the Board of Trustees shall appoint, or the Executive Director when directed by such committee or by the Trustees, shall have the power to demand and collect the contributions of the Employers to the Fund. Said Board of Trustees shall take such steps, including the institution and prosecution of, and intervention in, any legal proceedings as the Trustees in their discretion deem in the best interest of the Fund to effectuate the collection or preservation of contributions or other amounts which may be owed to the Trust Fund, without prejudice, however, to the rights of the Union to take whatever steps which may be deemed necessary for such purpose. The Trustees are authorized to receive all Employer contributions and apply such contributions first to any interest due, and then to the oldest unpaid balance of contributions due. Nothing herein shall give any Employer the right to designate how any contributions shall be applied.

Sec. 5. *Production of Records*—Each Employer shall promptly furnish to the Trustees, upon reasonable demand, the names and current addresses of its Employees, their Social Security numbers, the hours worked by each Employee and past industry employment history in its

files and such other information as the Trustees may reasonably require in connection with the administration of the Trust. The Trustees may, by their representatives, examine the pertinent records of each Employer at the Employer's place of business whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust. All Employers shall annually furnish to the Trustees, if requested by them, a statement showing whether:

(a) the organization is a corporation and the names of all of its officers;

(b) if not a corporation, a certificate stating that it is either a partnership or an individual proprietorship and the names of the partners or the name of the individual proprietor.

The Union will comply with any reasonable request of the Trustees to examine those records of the Union which may indicate the employment record of any Employee whose status is in dispute. The names and addresses of participants and beneficiaries are confidential information not to be disclosed by the Trustees except as required by an order of a court of competent jurisdiction, except where necessary for determination of benefits in accordance with the provisions of this Trust Agreement, or as required by law.

ARTICLE IV

POWERS AND DUTIES OF TRUSTEES

Sec. 1. The Trustees shall have authority to control and manage the operation and administration of the Trust in accordance with applicable law.

Sec. 2. The Trustees shall hold, manage, care for, and protect the Trust Fund and collect the income therefrom and contributions thereto, except to the extent that any of these functions or responsibilities are assigned to another entity or entities pursuant to any provision of this Article.

* * *

Sec. 6. The Trustees shall engage one or more independent qualified public accountants and enrolled actuaries to perform all services required by and in accordance with applicable law and such other services as the Trustees deem necessary.

Sec. 7. The Trustees, to the extent permitted by applicable law, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, telegram, or other paper or document believed by them to be genuine and to contain a true statement of facts, and to be signed by the proper person.

* * *

Sec. 9. The Trustees are hereby authorized to formulate and promulgate any and all necessary rules and regulations which they deem necessary or desirable to facilitate the proper administration of the Trust, provided the same are not inconsistent with the terms of the Agreement, and the Articles in the Central States, Southeast and Southwest Areas Agreements creating the Pension Fund. All rules and regulations adopted by action of the Trustees for the administration of the Trust Fund shall be binding upon all parties hereto, all parties dealing with the Trust, and all persons claiming any benefits hereunder.

* * *

Sec. 11.

(a) The Trustees may assign, from time to time, various administrative matters to such committees and subcommittees of Trustees, or to such other individuals or organizations, as they may deem necessary or appropriate in their sole discretion. The Trustees may also assign and delegate, from time to time, specified Trustee responsibilities to committees and subcommittees of Trustees, as they deem necessary or appropriate in their sole discretion. Committees and subcommittees of Trustees shall consist of an equal number of Employer and Employee Trustees.

* * *

Sec. 13. The Trustees shall, by regulation, establish rules relating to payments of contributions by Employers for Employees during periods of such Employees' illness or disability and related matters but not contrary to applicable collective bargaining agreements.

Sec. 14. The Trustees are hereby empowered, in addition to such other powers as are set forth herein or conferred by law:

(a) To enter into any and all contracts and agreements for carrying out the terms of this Agreement and Declaration of Trust and for the administration of the Trust Fund, and to do all acts as they, in their discretion, may deem necessary or advisable, and such contracts and agreements and acts shall be binding and conclusive on the parties hereto and on the Employees involved.

* * *

(e) To do all acts, whether or not expressly authorized herein, which the Trustees may deem neces-

sary or proper for the protection of the property held hereunder.

• • •

Sec. 15. The Employer Trustees and Employee Trustees shall not be paid any compensation for their services hereunder for attendance at regular or special meetings of the Trustees; but the Trustees may be reimbursed for expenses properly and actually incurred for attending regular or special meetings of the Trustees or committees or subcommittees or while performing specific assignments; provided, further, that the Trustees who are not receiving full-time pay from an Employer, Employer Association or Union may be paid reasonable compensation on a per hour and/or per day basis for services rendered as a member of a committee, subcommittee, or while performing specific assignments, which rate shall be established and reestablished by the Trustees from time to time. Any such request for expense reimbursement and/or compensation shall be submitted on a voucher form approved by the Trustees.

Sec. 16. The Trustees shall use and apply the Trust Fund for the following purposes:

• • •

(b) To pay or provide for the payment of retirement and related benefits to eligible Employees in accordance with the terms, provisions and conditions of the Pension Plan to be formulated and agreed upon hereunder by the Trustees.

Sec. 17. The Trustees, by majority action, shall have the power to construe the provisions of this Agreement and the terms and regulations of the Pension Plan; and any construction adopted by the Trustees in good faith

shall be binding upon the Union, Employees and Employers.

• • •

ARTICLE V

CONTROVERSIES AND DISPUTES

Sec. 1. In any controversy, claim, demand, suit at law, or other proceeding between any participant, beneficiary, or any other person and the Trustees, the Trustees shall be entitled to rely upon any facts appearing in the records of the Trustees, any instruments on file with the Trustees, with the Union or with the Employers, any facts certified to the Trustees by the Union or the Employers, any facts which are of public records, and any other evidence pertinent to the issue involved.

Sec. 2. All questions or controversies, of whatsoever character, arising in any manner or between any parties or persons in connection with the Fund or the operation thereof, whether as to any claim for any benefits preferred by any participant, beneficiary, or any other person, or whether as to the construction of the language or meaning of the rules and regulations adopted by the Trustees or of this instrument, or as to any writing, decision, instrument or accounts in connection with the operation of the Trust Fund or otherwise, shall be submitted to the Trustees, or to a committee of Trustees, and the decision of the Trustees or of such committee thereof shall be binding upon all persons dealing with the Fund or claiming any benefit thereunder. To the extent this section is contrary to or inconsistent with the June 30, 1977 Agreements, this section shall be inapplicable.

Sec. 3. The Trustees may, in their sole discretion, compromise or settle any claim or controversy in such

manner as they think best, and any decision made by the Trustees in compromise or settlement of a claim or controversy, or any compromise or settlement agreement entered into by the Trustees, shall be conclusive and binding on all parties interested in this Trust. To the extent this section is contrary to or inconsistent with the June 30, 1977 Agreements, this section shall be inapplicable.

• • •

ARTICLE VII

ESTABLISHMENT OF PENSION PLAN

Sec. 1. Formulation of Plan — The Trustees shall formulate a Pension Plan for the payment of such retirement pension benefits, permanent disability pension benefits, death benefits, and related benefits, as are feasible. Such Pension Plan shall at all times comply with all applicable federal statutes and regulations and with the provisions of this Trust Agreement. The Trustees shall not be under any obligation to pay any pension if the payment of such pension will result in loss of the Funds's tax exempt status under the then applicable Internal Revenue Code and any regulations or rulings issued pursuant thereto. The Trustees shall draft procedures, regulations, and conditions for the operation of the Pension Plan, including, by way of illustration and not limitation: conditions of eligibility for covered Employees, procedure for claiming benefits, schedules of type and amount of benefits to be paid, and procedure for the distribution of benefits. The Trustees may also provide for the payment of partial pensions, and may enter into agreements with other trustees of pension plans which conform to the applicable sections of the then applicable Internal Revenue

Code for purposes of tax deductions for the reciprocal recognition of service credits and payments of pension benefits based upon such service credits.

Sec. 2. The Trustees shall provide participants and beneficiaries such information as is required by law.

Sec. 3. Amendment of Plan — The Pension Plan may be amended by the Trustees from time to time, provided that such amendments comply with the applicable sections of the then applicable Internal Revenue Code, all applicable federal statutes and regulations, the contract articles creating the Pension Fund, and the purposes as set forth in this Agreement. Additionally and not by way of limitation, the Trustees may amend the Pension Plan, in future, or retroactively, where they deem it necessary to maintain the continuation of the Fund's tax exempt status or to preserve compliance with the then applicable Internal Revenue Code, applicable federal statutes, and any regulations or rulings issued with respect thereto. A copy of each amendment of the Pension Plan shall be adopted and filed by the Trustees as part of the records and minutes of the Trustees, and one copy thereof shall be distributed to the Union and to each Employer or Employer Group signatory to this Trust Agreement.

* * *

ARTICLE IX

PAYMENTS TO PERSONS UNDER LEGAL DISABILITY

In case any benefit payments hereunder become payable to a person under legal disability, or to a person not adjudicated incompetent but, by reason of mental or phys-

ical disability, in the opinion of the Trustees, is unable to administer properly such payments, then such payments may be paid out by the Trustees for the benefit of such person in such of the following ways as they think best, and the Trustees shall have no duty or obligation to see that the payments are used or applied for the purpose or purposes for which paid:

(a) directly to any such person;

(b) to the legally appointed guardian or conservator of such person;

(c) to any spouse, parent, brother, or sister of such person for his welfare, support and maintenance;

(d) by the Trustees using such payments directly for the support, maintenance and welfare of any such person.

• • •

ARTICLE XI

TERMINATION OF TRUST

Sec. 1. This Trust shall cease and terminate upon the happening of any one or more of the following events:

(a) In the event the Trust Fund shall be, in the opinion of the Trustees, inadequate to carry out the intent and purpose of this Agreement, or to meet the payments due or to become due under this Agreement to persons already drawing benefits.

• • •

ARTICLE XII

EXTENSION OF PLAN

The Trustees are authorized to extend the coverage of this Agreement and Trust to such other Employers

and Employees as such Trustees shall agree upon, provided such Employers and Employees are required to conform to the terms and conditions of the Trust and to make the same rate of payments required of the Employers herein, for the same benefits.

ARTICLE XIII

VESTING OF RIGHTS

The Trustees shall establish standards for the vesting of benefits which conform to no less than the minimum standards required by law. No Employee or other person shall have any vested interest or right in the Trust Fund except as provided by the Trustees in conformance with applicable law.

ARTICLE XIV

MISCELLANEOUS

Sec. 1. In no event shall the Employers, directly or indirectly, receive any refund on contributions made by them to the Trust, except in case of bona fide mistake, and as to which contributions are returned within one year after payment of the contributions, nor directly or indirectly participate in the disposition of the Trust Fund or receive any benefits from the Trust Fund. Upon transfer of each contribution to the Trustees, all responsibilities of the Employers for such contributions shall cease, and the Employers shall have no responsibilities for the acts of the Trustees. No Employee shall have any individual right, title, interest, or claim against any Employer, Employer's contribution, or the Trust Fund, except as may be expressly provided for in this Agreement or under federal law.

Sec. 2. The Union or the Employer may, at any time, demand of the Trustees an accounting with respect to any and all accounts upon agreement to pay necessary expenses thereof. The Trustees shall be entitled, at any time, to have a judicial settlement of their accounts and judicial determination of any questions in connection with the administration or distribution thereof. Any Trustee who has resigned, been removed from office, or not been reappointed shall execute all instruments necessary to transfer the Trust Fund.

Sec. 3. In the event any question or dispute shall arise as to the proper person or persons to whom any payments shall be made hereunder, the Trustees may withhold such payment until an adjudication of such question or dispute, satisfactory to the Trustees, in their sole discretion, shall have been made, or the Trustees shall have been adequately indemnified against loss to their satisfaction.

Sec. 4. Non-payment by an Employer of any moneys due shall not relieve any other Employer from his obligation to make payment. In addition to any other remedies to which the parties may be entitled, an Employer shall be obligated to pay interest at the rate of eight (8) per cent per annum on the moneys due to the Trustees from the date when the payment was due to the date when the payment is made, together with all expenses of collection incurred by the Trustees, including, but not limited to, attorneys' fees and such fees for late payment as the Trustees determine and as permitted by law.

Sec. 5. Where used in this Agreement, words in the masculine shall be read and construed as in the feminine,

and words in the singular shall be read and construed as though used in the plural, in all cases where such construction would so apply.

Sec. 6. The Article titles are included solely for convenience and shall, in no event, be construed to affect or modify any part of the provisions of this Agreement or be construed as part thereof.

Sec. 7. This Agreement shall in all respects be construed according to and governed by the laws of the State of Illinois, including but not limited to the laws applicable to the rate of interest in the State of Illinois, except as such laws may be preempted by the laws and regulations of the United States.

ARTICLE XV

BENEFICIAL RIGHTS

No Employer or Union, or Employees, shall have any right, title or interest in or to the Trust Fund or any part thereof other than vesting under the Pension Plan except in accordance with applicable law. There shall be no prorata or other distribution of any of the assets of the Fund as a result of any Union, Employer or Group of Employees of Employers ceasing their participation in this Fund for any purpose or reason, except as required by law.

• • •

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Civil Cause No. 80-0535-C(B)

LORAN W. ROBBINS (other plaintiffs' names omitted in printing),

Plaintiffs,

vs.

SCHNEIDER MOVING AND STORAGE COMPANY, A Missouri corporation,

Defendant.

(Filed June 5, 1980)

ANSWER

COMES NOW Defendant, Schneider Moving and Storage Company, and for its Answer to Plaintiffs' Complaint states as follows:

1. Defendant denies the allegation contained in paragraph 1 of Plaintiffs' Complaint.

2. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 2 of Plaintiffs' Complaint, and therefore denies same.

3. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 3 of Plaintiffs' Complaint, and therefore denies same.

4. Defendant admits the allegations contained in paragraph 4 of Plaintiffs' Complaint.

5. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5 of Plaintiffs' Complaint, and therefore denies same.

6. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 6 of Plaintiffs' Complaint, and therefore denies same.

7. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 7 of Plaintiffs' Complaint, and therefore denies same.

8. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 8 of Plaintiffs' Complaint, and therefore denies same.

9. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 9 of Plaintiffs' Complaint, and therefore denies same.

10. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 10 of Plaintiffs' Complaint, and therefore denies same.

11. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 11 of Plaintiffs' Complaint, and therefore denies same.

12. Defendant denies the allegations contained in paragraph 12 of Plaintiffs' Complaint.

13. Defendant denies the allegations contained in paragraph 13 of Plaintiffs' Complaint.

14. Defendant denies the allegations contained in paragraph 14 of Plaintiffs' Complaint.

15. Defendant denies the allegations contained in paragraph 15 of Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES

Answering further, and for its Affirmative Defenses, Defendant states as follows:

1. The subject matter of Plaintiffs' Complaint is barred by an accord and satisfaction between Plaintiffs and Defendant.

2. Plaintiffs' Complaint is barred by estoppel.

3. Plaintiffs' Complaint is barred by laches.

4. Plaintiffs' Complaint is barred by the statute of limitations.

5. Plaintiffs have previously waived any right they may have had to file their Complaint in this matter.

6. Plaintiffs' Complaint fails to state a claim against Defendant upon which relief can be granted.

7. Plaintiffs do not have standing to bring this Complaint against Defendant.

8. This Court lacks jurisdiction over the subject matter of Plaintiffs' Complaint.

WHEREFORE, Defendant prays that Plaintiffs' Complaint be dismissed in its entirety at Plaintiffs' costs, that Defendant be awarded its reasonable attorney's fees, and

that Defendant be awarded such other relief as to this Court may seem proper.

Respectfully submitted,

SUELTHAUS, KRUEGER, CUNNINGHAM, YATES & KAPLAN, P.C.

By /s/ David F. Yates

By /s/ W. Dudley McCarter
7711 Carondelet Ave., Suite 500
St. Louis, Missouri 63105
(314) 727-7676

Attorneys for Defendant
Schneider Moving & Storage Company

(Certificate of Service omitted in printing.)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Cause No. 80-0535-C(B)

LORAN W. ROBBINS, et al.,
Plaintiffs,

vs.

SCHNEIDER MOVING & STORAGE COMPANY,
a Missouri corporation,
Defendant.

MOTION OF DEFENDANT TO DISMISS COMPLAINT

(Filed October 20, 1980)

COMES NOW the Defendant, pursuant to Rule 12 of the Federal Rules of Civil Procedure, and moves this Court for an order dismissing Plaintiff's (sic) Complaint on the following grounds:

1. This Court lacks jurisdiction over the subject matter.

2. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

WHEREFORE, Defendant prays for an Order of this Court dismissing Plaintiff's Complaint, and for such other and further Orders as the Court may deem proper.

Suelthaus, Krueger, Cunningham,
Yates & Kaplan, P.C.
/s/ David F. Yates, #20965
/s/ W. Dudley McCarter

7711 Carondelet Ave., Suite 500
St. Louis, Missouri 63105
(314) 727-7676
Attorneys for Defendant

(Certificate of Service omitted in printing)

State of Missouri)
County of St. Louis) ss.

AFFIDAVIT

COMES NOW Marvin Schneider, and upon his oath deposes and says:

1. I am the Vice President of Schneider Moving & Storage Company, the Defendant in Case No. 80-535C(B) (sic) now pending in the United States District Court for the Eastern District of Missouri, Eastern Division.

2. I have been involved in the commercial and residential moving business with Schneider Moving & Storage Company for approximately ten (10) years. My father, Frank F. Schneider, who is President of Schneider Mov-

ing & Storage Company, has been involved in the commercial and residential moving business in the metropolitan St. Louis area for 31 years.

3. During the entire time that I have been involved with Schneider Moving & Storage Company and in the moving industry, and on information and belief, for as long as my father has been involved with Schneider Moving & Storage Company and in the moving business, Schneider Moving & Storage Company has employed only two types of nonsupervisory employees—regular employees and extra employees. The extra employees are commonly referred to as "extras". It has always been the practice of Schneider Moving & Storage Company to regard certain employees as regular employees, entitled to seniority, holidays, vacations, and other benefits under the collective bargaining agreement with Teamsters Local No. 610. "Extras" were people who, from time to time, were employed as additional help, when needed and when they were available for work. When additional help was needed, the Company would seek "extras" from various sources, including the Union, recommendations from its regular employees, and recommendations from other movers in the moving industry. These "extras" did not have an obligation to accept employment with us and we did not feel that we had any authority or power over them to force them to work for us when we needed them.

4. The foregoing practice of using "extras" is, to the best of my knowledge, information, and belief, typical of the moving industry in the greater metropolitan St. Louis area.

5. On or about May 29, 1979, the Company voluntarily submitted to an audit of its payroll records by the

Central States Southeast and Southwest Areas Health and Welfare and Pension Funds. As a result of that audit the Company was billed for allegedly delinquent contributions to the Health and Welfare Fund in the amount of $12,303.50 and for allegedly delinquent contributions to the Pension Fund in the amount of $12,610.50. The largest part of the amounts alleged to be delinquent, were claimed to be due for employees employed as "extras" during the period March 28, 1976 through March 31, 1979. Additional amounts were claimed to be due and owing for two supervisors and a porter, all three of whom it is contended are outside of the scope of the bargaining unit covered by the collective bargaining agreement with Local 610.

6. Further affiant saith not.

I swear that the foregoing statement is true to the best of my knowledge and belief.

/s/ Marvin Schneider

Sworn and subscribed to before me this 17th day of October, 1980.

/s/ Rhonda G. McMaster
Notary Public

6-27-83

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Civil Cause No. 80-0379-C(B)

LORAN W. ROBBINS (other plaintiffs' names omitted in printing),

Plaintiffs,

vs.

PROSSER'S MOVING AND STORAGE COMPANY,
a Missouri Corporation,

Defendant.

COMPLAINT

(Filed March 19, 1980)

Now come the Plaintiffs, by their attorneys, LaTourette and Weyerich, by Donald J. Weyerich and as and for a cause of action against the Defendant allege and show to the Court as follows:

I.

JURISDICTION

1. Jurisdiction of this Court is founded upon: Section 301 (a) of the Labor Management Relations Act of 1947, as amended, (29 USC Section 185 (a)); and Section 502 of the Employee Retirement Income Security Act of 1974 (29 USC 1132) in that the Plaintiffs are aggrieved by the Defendant's violation of the Collective Bargaining Agreements, Pension Plan and Pension Agreement and the Defendant's continued refusal to comply with certain terms of Collective Bargaining Agreements and Trust Plan and Trust Agreement of the Central States, Southeast and Southwest Areas Pension Fund and the Central States, Southeast and Southwest Areas Health and Welfare Fund thereby violating the provisions of the Employee Retirement Income Security Act of 1974, the terms and provisions of the employee benefit plans, Section 301 of the Labor Management Relations Act of 1947 and the Common Law of the State of Missouri.

II.

PARTIES

2. Plaintiffs Loran W. Robbins, Marion M. Winstead, Harold J. Yates, Robert J. Baker, Howard McDougall, Thomas F. O'Malley and R. V. Pulliam, hereinafter referred to as "The Trustees" are trustees of the Central States, Southeast and Southwest Areas Pension Fund, a common law pension trust established by trust agreement and an employee benefit plan, with its principal place of business in Chicago, Illinois, hereinafter referred to as "The Pension Fund"; and bring this action on behalf of the Trustees, their predecessors and/or successors, and the participants and beneficiaries of the Pension Fund, and the Pension Fund.

3. Plaintiffs Loran W. Robbins, Marion M. Winstead, Harold J. Yates, Robert J. Baker, Howard McDougall, Thomas F. O'Malley and R. V. Pulliam, hereinafter referred to as "The Trustees" are the trustees of the Central States, Southeast and Southwest Areas Health and Welfare Fund, a common law health and welfare trust, established by trust agreement and an employee benefit plan, with its principal place of business in Chicago, Illinois, hereinafter referred to as "The Health and Welfare Fund"; and bring this action on behalf of the Trustees, their predecessors and/or successors, and the participants and beneficiaries of the Health and Welfare Fund, and the Health and Welfare Fund.

4. Defendant Prosser's Moving and Storage Company, a Missouri corporation, is a citizen of the State of Missouri, a public mover, with its office and principal

place of business at 2718 Delmar Boulevard, St. Louis, Missouri, and is transacting business within the City of St. Louis, State of Missouri.

III.

NATURE OF CLAIMS

5. Defendant is an employer and a party in interest in an industry affecting commerce within the meaning of Section 3 (5), (11), (12) and (14) of the Employee Retirement Income Security Act of 1974 (29 USC 1002 (5) (11) (12) and (14)) and the Labor Management Relations Act of 1947 (29 USC 151 *et seq.*).

For all times relevant herein, Defendant was a party to and agreed to abide by the terms of Collective Bargaining Agreements between itself and Local Union No. 610, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America which is a labor organization that represents for the purpose of collective bargaining certain employees of Defendant and employees of other employers in industries affecting interstate commerce within the meaning of Sections 2 (5), 9 (a), and 301 (a) of the Labor Management Relations Act of 1947, as amended (29 USC 151 *et seq.*).

6. That on or about March 1, 1976, Defendant entered into a Master Agreement for Public Movers of the Greater Metropolitan St. Louis and St. Louis County areas of Missouri for the period March 1, 1976 through February 28, 1979 (See Exhibit 1) with Local Union No. 610, the significant portions of which are attached hereto, which Agreement provides for specific payments to the Health

and Welfare Fund and Pension Fund for each employee covered by said Agreement.

7. That on or about March 1, 1979, Defendant entered into a Master Agreement for Public Movers of the Greater Metropolitan St. Louis and St. Louis County Areas of Missouri for the period March 1, 1979 to February 28, 1982 (See Exhibit 2) with Local Union No. 610, the significant portions of which are attached hereto, which Agreement provides for specific payment to the Health and Welfare Fund and Pension Fund for each Employee covered by said Agreement.

8. As provided in the Collective Bargaining Agreements and Pension Trust Agreement (See Exhibit 3), Pension Plan (See Exhibit 4), Welfare Trust Agreement (See Exhibit 5), and Participation Agreement (See Exhibit 6), Plaintiffs, as Trustees aforesaid, are required to receive, hold and manage all monies required to be contributed to Central States, Southeast and Southwest Areas Health and Welfare and Pension Funds in accordance with the provisions of the then applicable Collective Bargaining Agreements, as a Trust Fund, for the uses and purposes set forth in the Agreement and Pension Trust Agreement and Welfare Trust Agreements governing the Fund to which the contributions are made.

9. By virtue of provisions contained in the Collective Bargaining Agreements to which Defendant is bound, Defendant did promise and become obligated to make contributions, in amounts set forth therein, to said Pension and Health and Welfare Funds on behalf of its employees for each hour worked or for which wages were received by such employees.

Defendant agreed that all amounts required to be paid into the said Pension and Health and Welfare Funds, as above set forth, shall be paid not later than the 15th day of the month next succeeding the month in which an employee covered by the collective bargaining agreement worked or received wages.

Defendant further agreed to furnish to the Trustees of the Central States, Southeast and Southwest Areas Pension and Health and Welfare Funds in each month, not later than the 15th day of the month next succeeding, a monthly contribution report, setting forth therein:

(a) the names and social security numbers of employees

(b) hours for which wages were received by the employee

(c) contributions required to be made on behalf of each employee

or in such cases where no employee worked or received wages, a statement to that effect and indicating no contributions were required to be made for such period.

Each Employer bound by the collective bargaining agreement has agreed that a failure by an Employer to make payment of contributions required to be made thereunder shall constitute a violation of said agreement by such Employer.

10. Pursuant to provisions contained in the Collective Bargaining Agreements and Health and Welfare and Pension Trust Agreements, the Trustees acting thereunder are authorized and empowered to examine and copy the payroll books and records of an Employer to permit such Trustees to determine whether an Employer is mak-

ing full payment as required under the applicable Collective Bargaining Agreement.

It is further provided therein, that in the event upon an audit made by the Trustees and/or upon other evidence it shall be found that an Employer has failed to make all contributions required on such Employer's part to be made, Trustees shall impose the following upon such delinquent Employer:

(a) all costs of such audit shall be paid by such Employer

(b) all costs, expenses, interest on monies due at the rate of nine percent (9%) per annum, and attorney's fees incurred by the Trustees

11. Notwithstanding the foregoing, Defendant has violated the obligations on Defendant's part undertaken, in that the Defendant has failed:

To allow the Trustees to make "proper" audit of Defendant's payroll books and records to determine amounts due to Central States, Southeast and Southwest Areas Pension Fund and Central States, Southeast and Southwest Areas Health and Welfare Fund

To furnish to the Trustees of Central States, Southeast and Southwest Areas Pension Fund and Central States, Southeast and Southwest Areas Health and Welfare Fund the required monthly statement as required by the collective bargaining agreement.

In addition to the foregoing, Defendant has repeatedly failed to make contribution reports and the required payments thereon upon their respective due dates.

12. By the above described omissions and breaches of Agreement by the Defendant:

The Trustees of the Central States, Southeast and Southwest Areas Pension Trust Fund may be required to deny the employee-beneficiaries of such fund, for whom required contributions have not been made, the benefits provided thereunder, thereby causing to such employee-beneficiary substantial and irreparable damage and injury.

The Trustees of the Central States, Southeast and Southwest Areas Health and Welfare Fund will be required to provide to employees of Defendant benefits provided thereunder notwithstanding the failure of Defendant to make required contributions thereto, thereby reducing the corpus of such Fund and endangering the rights of employee-beneficiaries thereunder on whose behalf contributions are being made, all to their substantial and irreparable injury.

13. Plaintiffs, in their behalf and on behalf of all employees for whose benefit the Central States, Southeast and Southwest Areas Pension Fund and Central States, Southeast and Southwest Areas Health and Welfare Fund have been established, have requested Defendant to perform its obligations, but Defendant has refused and failed to perform as herein alleged.

14. Plaintiffs are without an adequate remedy at law and will suffer immediate, continuing and irreparable injury, loss and damage unless Defendant is ordered to specifically perform all obligations on Defendant's part required to be performed under the Collective Bargaining Agreement, Pension Agreement, Health and Welfare Trust Agreement, and Participation Agreement, and is restrained from continuing to refuse to perform as thereunder required.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand the following relief:

1. That an account be taken as to all employees of Defendant covered by the Collective Bargaining Agreement, as to wages received and hours worked by such employees to determine amounts required to be paid to the Trustees of the Central States, Southeast and Southwest Areas Health and Welfare and Pension Funds, covering the periods for which the collective bargaining agreements are effective.

2. That Defendant be decreed to pay to the Trustees of the Central States, Southeast and Southwest Areas Health and Welfare and Pension Funds all sums determined to be due, together with interest on all monies due at the rate of nine percent (9%) per annum.

3. That Defendant be specifically required to perform and continue to perform all obligations on Defendant's part undertaken, particularly to furnish to the Trustees of Central States, Southeast and Southwest Areas Pension and Health and Welfare Funds the required monthly contribution report heretofore referred to, or in lieu thereof, a statement covering the period for which said report is required that Defendant had no employees for whom contributions are required to be made.

4. That Defendant be decreed to pay all costs attendant to any audit of Defendant's payroll books and records.

4. That Defendant be decreed to pay all costs attendant to any audit of Defendant's payroll books and records. (sic)

5. That Defendant be decreed to pay to the Trustees their reasonable attorney's fees all as in the Health and Welfare and Pension Trust Agreements.

6. Plaintiffs have such other and further relief as by the Court may be deemed just and equitable, all at Defendant's costs.

LaTOURETTE AND WEYERICH
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Attorney for Plaintiffs
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Clayton, Missouri 63105
(314) 727-0777

(Exhibits omitted in printing, except Exhibit 2, printed below.)

EXHIBIT 2

MASTER AGREEMENT

FOR

PUBLIC MOVERS OF THE
GREATER METROPOLITAN ST. LOUIS AND
ST. LOUIS COUNTY AREAS OF MISSOURI

March 1, 1979

TO

February 28, 1982

Miscellaneous Drivers and Helpers Union, Local 610

Affiliated with the International
Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers of America

(Received C. S. Contract Dept., May 31, 1979)

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AGREEMENT

This Agreement, effective March 1st 1979, by and between Prosser Moving & Storage Co., or its successors, located in the Greater Metropolitan St. Louis and St. Louis County of Missouri, hereinafter called the "Company" party of the first part, and Miscellaneous Drivers and Helpers Local No. 610, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or its successors, party of the second part, hereinafter called the "Union", for the purpose of establishing rates of pay, wages, hours of work, and conditions or (sic) employment to be observed between the parties hereto.

ARTICLE I—A RECOGNITION

The Company agrees to recognize, and does hereby recognize, the Union, its agents, representatives or successors as the exclusive bargaining agency for all of the truck drivers, warehousemen, helpers and packers.

The Company will neither negotiate nor make collective bargaining agreements for any of its employees in the bargaining unit covered hereby unless it be through duly authorized representatives of the Union.

The Company agrees that it will not interfere with, restrain, coerce or discriminate against any of its employees in connection with their membership in the Union.

ARTICLE I—B JURISDICTION

Section 1 Employees shall perform the following assignments:

(Page 2) All local moving of residential and commercial packaging and furnishings.

All warehouse work, packing and unpacking, crating and uncrating, deliveries and pickups of materials and equipment.

Work as helpers for loading and unloading of all local and long-distance trucks, when such work is performed in the commercial zone or a seventy-five (75) mile radius of St. Louis, Missouri and the Company is the originating or destination agent.

Work as drivers of long-distance trucks when such equipment is owned, leased as leasee, assigned to and operated by this Company.

Section 2. The Employer will not direct or require persons outside the bargaining unit here involved to perform work which is recognized as the work of the employees in said bargaining unit.

Section 3. The intent of this Article is not to add to or delete from the jurisdiction of the Union. The Company shall not construe to circumvent recognition of jurisdiction of this Local Union.

ARTICLE II UNION SECURITY

Section 1. It is understood and agreed by and between the parties hereto that as a condition of continued employment all persons who are hereafter employed by the Employer in the unit which is the subject of this Agreement shall become members of the Union not later than the thirty-first day following the beginning of their employment or the execution date of this Agreement, whichever is the later; that the continued employment by the Employer in said unit of persons who are already mem-

bers in good standing of the Union shall be conditioned upon those persons continuing their payment of the periodic dues of the Union; and that the continued employment of persons who were in the employ of the Employer prior to the date of this Agreement and who are not now members of the Union shall be conditioned upon those persons becoming members of the (Page 3) Union not later than the thirty-first day following the execution date of this Agreement. The failure of any person to become a member of the Union at such required time shall obligate the Employer upon written notice from the Union to such effect and to the further effect that union membership was available to such person on the same terms and conditions generally available to other members to forthwith discharge such person. Further, the failure of any person to maintain his union membership in good standing as required herein shall, upon written notice to the Employer by the Union to such effect, obligate the Employer to discharge such person.

Section 2. The parties hereto also recognize the fact that the Union's Hiring Hall may be of assistance in supplying casual employees, to meet the Company's need for additional employees on a daily basis. It is therefore agreed that the Company shall notify the Union office whenever such additional employees are needed, and afford the Union a reasonable opportunity to supply extra employees to fill such needs as the need for extra employees may arise.

Section 3. If any Article or Section of this Agreement or any amendment thereto should be held invalid by operation of law or by any tribunal of competent jur-

isdiction, or if compliance with or enforcement of any Article or Section should be restrained by such tribunal pending a final determination as to its validity, the remainder of this Agreement or amendments thereto or the application of such Article or Section to persons or circumstances other than those as to which it has been held invalid or as to which compliance with or enforcement of has been restrained shall not be affected thereby.

Section 4. In the event that any Article or Section is held invalid (Page 4) or enforcement of or compliance with which has been restrained, as above set forth, the parties affected thereby shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory agreement regarding such Article or Section. If the parties do not reach agreement, the issue shall be referred to arbitration, as hereinafter provided, except that if any Section of the Union Security Clause should be declared invalid the parties shall not be bound to arbitrate such issue.

ARTICLE III CHECK-OFF OF DUES AND INITIATION FEES

It is understood and agreed between the Employer and the Union that the Employer will deduct any back unpaid union dues and initiation fees owed the Union (provided such indebtedness for dues or initiation fees was incurred during employment with the Employer) as well as current monthly union dues and initiation fees, from the paychecks of all Employees who have signed proper legal authorization for such deductions and who are covered by this Agreement, on the last pay day of the month

preceding the current month for which current dues and initiation fees are due the Union. The Employer further agrees to remit to the Secretary-Treasurer of the Union, immediately after the check-off payday, all union dues and initiation fees so deducted from the paychecks of Employees covered by this Agreement. The Secretary-Treasurer will promptly issue a receipt to the Employer for all such dues and initiation fees so received by him.

ARTICLE IV REPRESENTATION

Section 1. The Union shall be represented by Shop Stewards, to be selected in any manner determined by the *Union*. The names of the Shop Stewards shall be certified in writing by the Union to the Employer within ten (10) days after their election. The Shop Stewards may meet with the Employer as often as necessary to consider grievances.

Section 2. An authorized representative of the Union shall have access at all times during working hours to the Employer's premises and work sites (Page 5) for the purpose of enforcing this Contract Agreement or to confer with Unit officers of the Industry, Shop Stewards and the Employer's officials.

ARTICLE V GRIEVANCE PROCEDURE

Should differences arise between the Company and the Union or any employee of the Company as to the meaning or application of the provisions of this agreement, such differences shall be settled in the following manner:

Section 1. The aggrieved employees or employee shall first take the matter up with the shop steward who in turn

will take the grievance up with the foreman in charge of the department within three (3) working days after knowledge of the alleged violation. The employees shall have the right to have the shop steward present on any grievance.

Section 2. If no satisfactory adjustment is agreed upon within one (1) working day, the matter shall be referred in writing within five (5) working days by the steward and/or union to the general manager of the company involved, or some other executive officer of the Company with authority to act, who shall review the alleged grievance and offer a decision within five (5) working days after receipt of the same.

Section 3. If no agreement has been reached pursuant to the procedure specified in Sections 1 and 2, either party reserves the right to request arbitration of the dispute. If arbitration is requested by either the Company or the Union within thirty days following the decision of the General Manager, the Company and the Union agree to submit the grievance to an arbitration board as provided for in this Agreement, except that the Union reserves the right to use its economic power in support of its demands if the violation involves the failure by the Employer to pay the established hourly rates of pay, failure to make the required contributions into the Health & Welfare, Pension or Prescripticare Plans. The Union may not initiate strike action after agreeing to proceed to arbitration.

(Page 6) Section 4. If the grievance is submitted to arbitration, the Company and the Union agree to accept, as final and binding on all parties, the decision of the ma-

jority of an arbitration board consisting of one (1) member selected by the Company and one (1) member selected by the Union and the third selected by the two arbitrators nominated above. It shall be incumbent upon both parties to nominate the third arbitrator within seven (7) days after such notice is given. Upon the failure of the two arbitrators nominated as above to agree upon the third arbitrator, both parties agree to ask the U. S. Mediation and Conciliation Service to nominate nine (9) persons for such third arbitrator from whom the parties will select one by each side alternately striking from the list, one name, commencing with the party seeking arbitration and the last name remaining on such list will be deemed chosen as the third arbitrator. The expense of the arbitrator selected by the Company shall be borne by the Company. The expense of the arbitrator selected by the Union shall be borne by the Union. The expense of the third arbitrator selected or appointed shall be borne equally by the Company and the Union.

ARTICLE VI SENIORITY

Section 1. In all cases of decreasing the working force the only factor to be considered will be the length of continuous service with the Company.

Section 2. It is understood that seniority shall be Company wide within the bargaining unit.

Section 3. The list of employees according to seniority is attached hereto and made a part of this Agreement. The Company agrees to supply the Union office with a list of all additions and/or deletions to the seniority list each March and September.

Section 4. The Company has the right to assign work on a day-to-day basis so (sic) in accordance with seniority providing the senior employees have the greater opportunity of employment.

(Page 7) Section 5. Seniority as defined above shall be broken and employment terminated by:

A. Discharge.

B. Resignation.

C. Absence due to layoff for a period of more than twenty-four (24) months from the date of layoff provided that in cases of proven sickness, he shall be continued on the seniority list until he is able to return to work.

D. Overstaying a leave of absence.

Section 6. *Layoffs.* An employee shall be continued on the seniority list of the Company for a period of twenty-four (24) months from the date of his layoff. Employees failing to report for work from a layoff within five (5) working days after being notified by registered mail shall have his employment terminated.

Section 7. *Union Activity.* Any employee elected or appointed as an official of the Union or delegate to any labor activity, necessitating a leave-of-absence shall be granted a leave of absence without pay or other benefits and be guaranteed reemployment at the end of such period with the same seniority as though he had been continuously employed, provided at least one (1) week's advance notice is given prior to leave of absence and upon return from said leave of absence.

Under no circumstances will this clause be construed as to prevent employees from serving as a witness or on negotiating committees from time-to-time.

Section 8. *Military Activity.* Regular employees who leave the service of the Company to enter that of the United States Armed Forces, or the service of the U. S. Maritime Commission or who are drafted by the United States Government for civilian service will upon their return within ninety (90) days from release from such service, be granted all seniority rights as if continuously employed by the Company during such service. Such persons will be rehired by the Company to take the place of other persons employed by the Company.

Section 9. *Day's Off* (sic). Employees called in to work on their days off, (Page 8) Sundays or Holidays, shall be called in by seniority and qualification.

Section 10. *Bidding.* Warehouse openings shall be posted and open for bid for a period of five (5) working days. The Company will fill such openings with the senior employee who signs the bid sheet to indicate that he desires said job, who may be qualified to perform the work in question.

The senior bidder shall be given a reasonable trial period of thirty (30) days to qualify and once qualified must remain on that job for the bid period.

Bids will not go into effect until its known that all employees had equal opportunity to bid.

Section 11. *Probationary Employee.* A new probationary employee shall work under the provisions of this Agreement but shall be employed on a ninety (90) calen-

dar day trial basis. During which period he may be discharged without further recourse; provided, however, that the Employer may not discharge or discipline for the purpose of evading this Agreement or discrimination against Union members.

A new employee must work thirty (30) cumulative work days within the probationary period and upon completion thereof, shall be considered a regular employee and placed on the seniority list. Such employees seniority date for all purposes shall be established as of the first day worked in such probationary period in which he meets the requirements aforementioned.

Any day worked, regardless, if the employee was or was not used as a replacement, shall be counted in determining whether or not the employee qualifies under the above provisions.

It is further mutually understood that any rehire of the probationary employee (after the ninety (90) day period) shall qualify the employee in accordance with these provisions.

A new employee can gain seniority by qualifying under the above provisions only. This provision shall not be used to defeat the purpose of (Page 9) hiring regular employees.

Section 12. *Hiring Hall Casual.* When the Employer needs casual employees, the Local Union shall be given equal opportunity with all other sources to provide suitable applicants. However, the Employer shall not be required to hire those referred by the Union.

It is further mutually understood that any casual employee who has established thirty (30) days' worked within the Moving Industry and then works a total of thirty (30) cumulative work days for the same Company within any ninety (90) calendar day period shall also accrue seniority under the provisions of this Article and in such instance his or her seniority date for all purposes shall be thirty (30) work days back from the day he or she worked the thirtieth (30th) day.

Only the day's (sic) worked because of additional work, shall be counted in determining whether or not he or she has qualified under the above provision. A casual employee can gain seniority be (sic) qualifying under the above provisions only. This provision shall not be used to defeat the purpose of hiring regular employees.

Section 13. *Seasonal Employee.* A seasonal employee is one, such as a student, who is hired for a seasonal period between May 15th and September 15th. With respect to seniority provisions herein a seasonal employee shall not gain seniority but shall comply with the provisions of Article II. The Employer may use one seasonal employee for every ten regular moving industry men used on any given day, except on commercial moves, when all other regular industry men shall be offered work before seasonal employees.

ARTICLE VII SUSPENSION OR DISCHARGE

Section 1. The Employer shall not discharge nor suspend any employee without just cause. The Employer shall practice progressive discipline. Progressive disci-

pline for related acts shall "generally" be defined as (Page 10) being:

a) Documented verbal warning

b) Two (2) written warning letters

c) Disciplinary suspension or discharge

However, progressive discipline need not apply to acts of dishonesty, drunkenness, use of intoxicating liquors or illegal drugs while on duty, willfull destruction of property, or gross insubordination. Warnings verbal and written must be sent by certified mail to the employees last known address, the Local Union and the Shop Steward affected. Warning letters will not remain in effect for this purpose beyond a period of six (6) months, and said letters shall not be used as a basis for further disciplinary action.

Section 2. The Employer shall not discharge nor suspend any employee without just cause. Any employee before discharge, will have an opportunity to present any facts or other information he wishes the Company to consider. Where possible, the information should be submitted in writing. The Company will follow the general principles of progressive discipline before discharge except in cases of serious misconduct as outlined above.

Section 3. Discharge must be by written notice sent by certified mail to the employee to his last known address, the Local Union and Shop Steward affected. Any employee may request an investigation as to his discharge or suspension. Should such investigation prove that an injustice has been done an employee, he shall be reinstated with full, partial, or no compensation for time lost. Appeal from discharge, suspension or warning letters must be made within ten (10) days by written notice.

ARTICLE VIII A. WAGES

Section 1. All regular employees shall be paid weekly on the pay day established by past practice. All Employees shall receive an itemized statement of earnings and deductions. All extra employees shall be paid upon completion of their tour of duty. Any change in the established pay day shall be negotiated between the Employer and the Union.

(Page 11) Section 2. The straight time hourly rates of pay for employees shall be:

LOCAL WORK	Effective 3-1-79	Effective 9-1-79	Effective 3-1-80
Driver	$6.75	$6.95	$7.25
1st shift Warehousemen	$6.75	$6.95	$7.25
2nd shift Warehousemen	$7.45	$7.65	$7.95
Packer	$6.75	$6.95	$7.25
Helper	$6.45	$6.65	$6.95

	Effective 9-1-80	Effective 3-1-81	Effective 9-1-81
Driver	$7.35	$7.65	$7.75
1st shift Warehousemen	$7.35	$7.65	$7.75
2nd shift Warehousemen	$8.05	$8.35	$8.45
Packer	$7.35	$7.65	$7.75
Helper	$7.05	$7.35	$7.45

Section 3. A probationary employee without previous experience in the Moving Industry in St. Louis may be hired at the rate of 80¢ per hour less than the scale for the classification of work for which hired, provided that his hourly rate is adjusted automatically 10¢ an hour upon the completion of every thirty (30) calendar days of employment until the classification rate of this Section is attained.

An employee with work experience when referred by the Union, shall be paid at the rate stated for his classification.

Section 4. A seasonal employee may be hired during the seasonal period of May 15th through September 15th; and shall be paid less than the helper's rate as follows:

1st year—$1.50 per hour less than the helpers current rate
2nd year—$1.00 per hour less than the helpers current rate
3rd year—$ .50 per hour less than the helpers current rate
4th year—shall be paid the same rate

When a seasonal employee is required to drive, pack, or perform warehouse work, said employee shall receive the rate of pay specified for that classification.

Section 5. The straight time hourly rates of pay for employees shall be: (Page 12)

LONG DISTANCE WORK	Effective 3-1-79	Effective 9-1-79	Effective 3-1-80
Driver	$6.75	$6.95	$7.25
Helper	$6.45	$6.65	$6.95

	Effective 9-1-80	Effective 3-1-81	Effective 9-1-81
Driver	$7.35	$7.65	$7.75
Helper	$7.05	$7.35	$7.45

Long Distance Driving Time—35 miles driven equals one (1) hour's pay at straight time the hourly rate.

Section 6. *Deadheaded time* shall be paid at thirty-five (35) miles driven equals one hour's pay at straight-time the hourly rate.

Section 7. *Layover time* caused by breakdowns of equipment, impassable roads, or waiting for return loads shall be paid at the straight time rate of pay up to and

including ten (10) hours for a twenty-four (24) hour period.

Section 8. *Long Distance Loading and Unloading* shall be paid at time and one-half (1-½) the straight time hourly rate, except where the time is on a Sunday or Holiday it shall be paid for at double the straight time hourly rate of pay, provided, it has been previously authorized and paid in full by Customer.

Section 9. *Long Distance Employee* re: Holiday Pay —Employee shall receive eight (8) hours' Holiday Pay as provided for in Article XIV in addition to compensation received for mileage and hourly work performed during the Holiday week. Upon returning said employee can take a day off without pay.

ARTICLE VIII B. LONG DISTANCE ALLOWANCES

Section 1. Straight time the long distance rate plus a daily travel allowance shall be paid to all employees who have been away from their home terminal for period of fifteen (15) hours or more in any twenty-four (24) hour period, provided the employee involved has accompanied the long distance truck.

(Page 13)

Allowance as follows:	Effective 3-1-79	Effective 3-1-80	Effective 3-1-81
	$22.00	$23.30	$25.00

Section 2. A daily travel allowance shall be paid to all employees who leave and return to their home terminal and have not been away fifteen (15) hours in any twenty-four (24) hour period, provided the employee involved has accompanied the long distance truck.

Allowance as follows:	Effective 3-1-79	Effective 3-1-80	Effective 3-1-81
	$7.00	$9.00	$10.00

ARTICLE VIII C. INCENTIVE PROGRAM

The Company or the Union may request to negotiate an addendum to this contract agreement RE: a possible incentive program for long distance work, however, once the program is initiated it shall remain in effect for the remainder of this contract agreement.

Section 1. The intent of the percentage program is not to decrease the work force when there is additional volume of business.

Section 2. *Safe-guard guarantee:* the employee shall be guaranteed the earnings received under this Incentive Program shall not be less than earnings he would have recived (sic) if he had been compensated in accordance with regular long distance provisions provided for in Article VIII A. Wages and B. Allowances.

When earnings are less the Company shall be obligated to pay whichever amount is greater in monies (sic).

ARTICLE IX HOURS OF WORK

Section 1. The normal work week shall be Monday through Friday. Starting time shall be 8:00 A.M. and finished at 4:30 P.M.

Section 2. The lunch period shall be at least a thirty (30) minute period or up to a maximum of a sixty (60) minute period as determined by the employer and employees of the Company, in which case the regular work day (Page 14) would end at 5:00 P. M. but not later.

Section 3. The Employer may change the established starting time with one week's notice, provided the starting time is not earlier than 7:00 A.M. or later than 8:30 A.M. and the end of the shift is not later than 5:00 P.M.

Section 4. Any employee who is required to work prior to the established starting time shall be paid time and one half (1-½) the prevailing rate of pay.

Section 5. Nothing contained in this Article shall be considered as any guarantee of hours or pay except that any employee who reports for work as scheduled will receive at least five (5) hours' pay at the prevailing rate of pay.

Section 6. All time worked in excess of eight (8) hours per day and all work in excess of forty (40) hours per week shall be paid at the rate of time and one-half (1-½) the employees straight time hourly rate for work performed during such overtime periods.

Section 7. All time worked on Saturdays shall be paid at the rate of time and one-half (1-½) the employees straight time hourly rate of pay.

Section 8. All work performed on Sundays or Holidays shall be paid at the rate of double the employees straight time hourly rate of pay.

Section 9. The warehouse second shift when practiced shall be established to start between 4:30 P.M. and 6:00 P.M. and finish between 1:00 A.M. and 2:00 A.M., the shift can not be established to overlap the first shift.

ARTICLE X WORK PRACTICE

It is understood and agreed that all employees shall do their best to further the interest of the Company.

(Page 15) Section 1. *Computing Time Worked:* The Company shall furnish time clocks or some other method of indicating time in and time out as is feasible or appropriate under the circumstances. In figuring the time worked by an employee, the Company shall credit him with time worked in the service of, and at the direction of, the Company. In figuring the time worked by an employee, the Company shall credit him with time worked from the moment that he leaves the garage until he returns to the garage, except when he is expected or instructed to report for work at a particular hour, in which event he shall be credited with time worked from the moment he reports; provided, however, that such employee in this unit covered by this agreement shall be compensated at a rate of pay stated herein and applicable to the work actually being performed at the time by such employee. This rate shall be paid to him for all hours in which he is so working. In the event of commercial moving, the Company shall credit him with time worked from the time he is instructed to report to the place, or begins to work, to the time he completes such work. It is mutually agreed between the parties to this contract that men assigned to a move shall be provided company transportation, by the Company, to their personal transportation if left at point of origin of move, or at company premises, or, if asked to report to a specific location they shall be reimbursed for out-of-pocket expense on parking.

Section 2. Whenever an employee classified as a helper works as a driver, packer, or warehouseman, he shall be compensated at the driver's, packer's or warehouseman's rate for all hours he is so working. An employee who works six (6) calendar months or more in a

calendar year in a higher classification shall be paid the rate for such classification for all hours he works thereafter.

Section 3. Seniority can not be used to displace a junior employee's original assignments for the remainder of a given day.

(Page 16) Section 4. Drivers of two separate vehicles shall not be permitted to assist each other on loading and unloading of long distance trucks.

Section 5. A registered two man operation shall be permitted to assist each other on a single job.

Section 6. *Warehouse:* If a Company does not practice the following clauses, then choice by seniority shall be the only factor used to determine who works in the warehouse on any given shift.

A. The Company shall provide one (1) full time Head-warehouseman on the first shift with a forty (40) hour guarantee Monday through Friday. This job will be posted yearly and claimed by seniority.

B. The Company may provide two (2) warehousemen on the second shift with a forty (40) hour guarantee Monday through Friday. These jobs will be posted prior to each six month period, April 1st through September 30th and October 1st through March 31st. Where practiced there shall be two (2) warehousemen to perform warehouse and normal maintenance work on the second shift.

C. The intent of the above clauses is not to restrict or limit the amount of warehouse jobs a company can post, however, when posted they shall comply as provided,

with the guarantees spelled out for the number of warehousemen aforementioned and not for the employees over those specified numbers.

D. An Employee classified as a warehouseman by Bid, but has no guarantees shall have choice by seniority on the days additional warehousemen are needed. However, if a choice can not be given the Company can assign the Junior Warehouseman to perform warehouse work.

Section 7. *Notification:* Employees scheduled to work should notify the Company of their inability to work as scheduled at least thirty (30) minutes prior to their scheduled starting time.

(Page 17) When thirty (30) minutes notice is not given the Company can fill the vacancy without revising the daily assigned schedule.

Section 8. *Commercial Work:* In cases where additional men are needed for commercial work, the following rule for working will apply:

a) Company's roster men
b) Hiring Hall casuals
c) Roster men from other companies
d) Seasonal employees

Section 9. *Union Helpers for owner-operators:* The Company and Union will assist in dispatching its employees and members for helping drivers load and unload long distance trucks. There will be no further obligation to the employee and union member in regard to collecting wages or workmen's compensation claims. However, the Union emphasizes the wages to be as follows:

	Effective 3-1-79	Effective 9-1-79	Effective 3-1-80
Driver	$6.75	$6.95	$7.25
Packer	$6.75	$6.95	$7.25
Helper	$6.45	$6.65	$6.95

	Effective 9-1-80	Effective 3-1-81	Effective 9-1-81
Driver	$7.35	$7.65	$7.75
Packer	$7.35	$7.65	$7.75
Helper	$7.05	$7.35	$7.45

A) Plus a three dollar ($3.00) daily allowance, five (5) hours' minimum pay, time and one-half (1-1/2) for after hours and Saturday work, and double time on Sundays and Holidays.

B) Members who charge more or less than the rates outlined in this contract could be subject to charges of this Union.

C) Union movers must carry a monthly dues receipt showing the month paid through. If a receipt cannot be shown and if not current within one (1) month, he may not be given the opportunity to work.

(Page 18) ARTICLE XI UNAUTHORIZED ACTIVITY

Section 1. It is understood and agreed that the Union shall have no financial liability for acts of its members or agents which are unauthorized and which the Union cannot control. It is agreed, however, that in the event of any unauthorized action, the Union shall, upon receiving notice thereof, urge its members to return to work, if there should be a work stoppage, and just as

soon as practical address a letter to the Company notifying the Company that the action of the Union members or agents is unauthorized.

Section 2. The Company shall be privileged to discipline employees responsible for such unauthorized activities without violation of the terms of this Agreement, subject however, to the grievance and arbitration provisions of this Agreement.

Section 3. In order that the Company may be apprised of an official of the Union empowered to authorize strikes, work stoppages, or actions which will interfere with the activities required of employees under this Agreement, it is understood and agreed that only the assigned Union Representative through authorization of the Executive Board has the power or authority to authorize any such actions or give the orders or directions necessary to carry out any such action.

ARTICLE XII PROTECTION OF RIGHTS

It shall not be a violation of this Agreement for the Employees covered hereunder to refuse to cross a picket line and perform work in any instance where the picket line has been either established and authorized or sanctioned and recognized by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

ARTICLE XIII MANAGEMENT RIGHTS

Section 1. It shall be the right of the Company to manage and (Page 19) direct its business. The right to hire, discipline, discharge, promote, lay-off, assign equip-

ment and work assignments, subject however, to the terms and provisions of this Agreement (sic).

Section 2. With due respect to the Company's usual rights to generally exercise its authority spelled out in this Article, the Company acknowledges its duty to use best judgment in providing senior employees the greater opportunities of employment.

ARTICLE XIV VACATIONS

Section 1. Any employee employed for one (1) year by the same Company shall be entitled to a one-week vacation with pay. Any employee employed for three (3) consecutive years by the same Company shall be entitled to a two (2) week vacation with pay. Employees employed for seven (7) consecutive years by the same Company shall be entitled to three (3) weeks vacation with pay. An employee employed for thirteen (13) consecutive years by the same Company shall be entitled to four (4) weeks' vacation with pay.

Effective March 1, 1981, Employees employed for thirty (30) consecutive years by the same Company shall be entitled to five (5) weeks' vacation. However, no employees shall receive a paid vacation unless he has worked a total of 1200 hours for one Company in the year immediately preceding the date of his eligibility for such vacation. Time lost due to sickness or accident shall be considered as time worked toward 1200 hour qualification.

Employees who leave the service of the Company, after completing one (1) full year of service shall receive a pro-rata vacation on the basis of one-twelfth (1/12) of his earned vacation for each month of completed service after his anniversary date.

For the purpose of this Article a week's pay shall be an amount equal to forty-five (45) times the hourly rate for his permanent classification (Page 20) of work.

Section 2. Vacations shall be given according to seniority, and cover the entire year giving due regard to employee anniversary date and his expressed desire and to the needs of the Company's business.

Section 3. While on a paid vacation, an employee shall not perform work for the Company or for any other Company covered by this Agreement.

Section 4. Vacation pay shall be paid on the last pay day prior to the beginning of the vacation period.

Section 5. Vacation schedules for employees shall be posted in a conspicuous place at least sixty (60) days prior to the scheduled dates.

Section 6. If a holiday falls during an employee's vacation he shall be given an additional day of vacation with pay.

Section 7. An employee who withholds selection of his vacation schedule beyond the date set by the Company shall be given the last choice to select his vacation.

Section 8. An employee who chooses to split his vacation shall, upon selection of his first choice of time off, wait until all other employees in the Company who are eligible have exercised their choices of vacation dates.

ARTICLE XIV HOLIDAYS

Section 1. A regular employee who has been on seniority of this Company for one hundred and eighty (180) days or more shall receive eight (8) hours' pay

at the hourly rate for his classification for the following holidays not worked:

New Years Day	Veteran's Day
Memorial Day	Thanksgiving Day
4th of July	Christmas Eve
Labor Day	Christmas Day

Section 2. Two (2) additional floating holidays shall be granted each calendar year in addition to the above listed holidays, provided (Page 21) however, the employee has been on seniority of this Company for one (1) anniversary year of employment. Said holidays shall be taken any time during the year, provided one (1) week's notice is given by the employee.

Section 3. Further qualifying holidays: Such employee shall have worked for the Company on his last scheduled workday before and his first scheduled workday after said Holiday. No employee shall forfeit his holiday pay if he has been available for scheduled work but was unable to do so because of accident or illness as proven by competent medical testimony; funeral leave; or because of such absence which has been approved by the Company for an urgent, necessary and compelling personal reason prior to the scheduled starting time of the day involved.

If an employee is on layoff status at the time the given Holiday occurs and he has worked for his employer within two (2) weeks before or within two (2) weeks after said Holiday.

ARTICLE XV HEALTH AND WELFARE BENEFITS

Section 1. Effective March 1, 1979, the Employer shall contribute to the Central States, Southeast and Southwest Areas Health and Welfare Fund, which is to be administered jointly by the parties thereto, the weekly sum specified in the following schedule for each Employee covered by this Agreement who has been on the payroll Ninety (90) days or more; Effective March 1, 1979, $29.50 per week, Effective March 1, 1980, $32.00 per week, Effective March 1, 1981, $34.50 per week. These amounts are required by the Central States, Southeast and Southwest Areas Health and Welfare Fund to maintain the highest Health and Welfare Program.

Section 2. The Employer presently making payments to the Central States, Southeast and Southwest Areas Health and Welfare Fund, and the Employers who may subsequently begin to make payments to such fund shall continue to make such payments for the life of this Agreement.

Section 3. By the execution of this Agreement, the Employer authorizes the Employers' Associations which are parties to the Health and Welfare Fund referred to in Section 1, to enter into appropriate trust agreements necessary for the administration of such fund, and to designate the Employer Trustees under such agreement, hereby waiving all notice thereof and ratifying all actions already taken or to be taken by such trustees within the scope of their authority.

Section 4. If an employee is absent because of illness or off-the-job injury and notifies the Employer of such

absence, the Employer shall continue to make the required contributions for a period of eight (8) weeks. If an Employee is injured on the job, the Employer shall continue to pay the required contributions until such Employee returns to work; however, such contributions shall not be paid for a period of more than twelve (12) months. If an Employee is granted a leave-of-absence, the Employer shall collect from said Employee, prior to the leave-of-absence being effective, sufficient monies to pay the required contributions into the Health and Welfare Fund during the period of absence.

Section 5. Contributions to the Health and Welfare Fund must be made for each week on each regular Employee, even though such employee may work only part-time under the provisions of this contract, including weeks where work is performed for the Employer but not under the provisions of this contract, and although contributions may be made for those weeks into some other Health and Welfare Fund.

Section 6. Employees who work either temporarily or in cases of emergency under the terms of this contract shall not be covered by the provisions of this Article.

The Company further agrees to provide weekly disability each week in an amount not to exceed $125.00 a week when combined with Workmen's Compensation for those weeks up to twenty-six (26) in which the employee (Page 23) has been found by the Workman's Compensation Commission to be eligible for compensation under the law.

ARTICLE XVI PENSIONS

Section 1. The Employer shall contribute to a pension fund, referred to in Sections 2 to 5, of this Article

XVI, the weekly sum specified in the following schedule for each Employee covered by this Agreement who has been on the payroll one hundred and eighty (180) days or more; Effective March 1, 1979, $31.00 per week, Effective March 1, 1980, $37.00 per week, Effective March 1, 1981, $41.00 per week. These amounts are required by the Central States, Southeast and Southwest Areas Pension Fund to maintain the highest Pension Program.

Section 2. This Fund shall be the Central States, Southeast and Southwest Areas Pension Fund. There shall be no other pension fund under this contract for operations under this contract or for operations under the Southwest and Southeast Areas contracts to which Employers who are party to this Contract are also parties.

Section 3. By execution of this Agreement, the Employer authorizes the Employers' Associations which are parties hereto to enter into appropriate trust agreements necessary for the administration of such fund, and to designate the Employer Trustees under such Agreement, hereby waiving all notice thereof and ratifying all actions already taken or to be taken by such Trustees within the scope of their authority.

Section 4. If an employee is injured on the job, the Employer shall continue to pay the required contributions until such employee returns to work; however, such contributions shall not be paid for a period of more than twelve (12) months. If an employee is granted a leave-of-absence, the Employer shall collect from said employee prior to the leave of absence being effective, sufficient monies to pay the required contributions into the Pension Fund during the period of absence.

(Page 24) Section 5. Contributions to the Pension Fund must be made for each week on each regular employee even though such employee may work only part-time under the provisions of this contract, including weeks where work is performed for the Employer but not under the provisions of this Contract, and although contributions may be made to the Pension Fund.

Section 6. Employees who work part-time, temporarily, or in cases of emergency, under the terms of this contract, shall not be covered by the provisions of this Article; and provided further, the Employer shall not be obligated to pay on any employee who does not perform twenty-five (25) hours of work in any week. However, the employer agrees to make contributions for each regular employee on the basis of a minimum of forty (40) weeks in any year.

ARTICLE XVII PRESCRIPTICARE

Section 1. The Employes (sic) shall contribute to the Teamsters Local 610 Prescripticare Trust Fund (or to a designated insurance agency), which is to be administered jointly by the parties thereto, the monthly sum specified in the following schedule for each employee covered by this Agreement who has been on the payroll thirty (30) days or more.

EFFECTIVE	March 1, 1979	$10.00 Per Mo.
EFFECTIVE	March 1, 1980	$11.00 Per Mo.
EFFECTIVE	March 1, 1981	$12.00 Per Mo.

Section 2. Employers presently making payments to Teamsters Local 610 Prescripticare Trust Fund (or to a designated insurance agency), and Employers who may

subsequently begin to make payments, shall continue to make such payment for the life of this Agreement.

Section 3. By the execution of this Agreement, the Employer authorizes the Employers' Association which are parties hereto to enter into appropriate trust agreements necessary for the administration of such fund, and to designate the Employer Trustees under such agreement, hereby waiving all notice thereof and ratifying all actions already taken or to be taken (Page 25) by such trustees within the scope of their authority.

Section 4. If an employee is absent because of illness or off-the-job injury and notifies the Employer of such absence, the Employer shall continue to make the required contributions for a period of six (6) months. If an employee is injured on the job, the Employer shall continue to pay the required contributions until such employee returns to work; however, such contributions shall not be paid for a period of more than twelve (12) months. If an employee is granted a leave of absence, the Employer shall collect from said employee, prior to the leave of absence being effective, sufficient monies to pay the required contributions during the period of absence.

Section 5. Contributions to the Trust Fund (or to a designated insurance agency) must be made for each month on each regular employee, even though such employee may work only part-time under the provisions of this contract, and although contributions may be made for those months where work is performed for the Employer but not under the provisions of this contract, and although contributions may be made for those months into some other Fund.

Employees who work either temporarily or in cases of emergency under the terms of this contract shall not be covered by the provisions of this paragraph.

Section 6. The intent of this Article is to provide those benefits outlined in the Trust Agreement creating the Teamsters Local 610 Prescripticare Trust Fund and the parties hereby agree that any language change in this Article necessary to be in compliance to provide those benefits shall be agreed to and incorporated as though fully set out herein, as long as the basic intent of this Article is not changed by any additional, or modified language, and further that the schedule of payments may not be altered during the term of this agreement, by such automatic language change.

(Page 26) ARTICLE XVIII MAINTENANCE OF STANDARD (sic)

Section 1. The Company agrees that all conditions of employment relating to wages, hours of work, overtime differentials and general working conditions shall be maintained at not less than the minimum standards in effect in the Company's place of business at the time of the signing of this Agreement and that wherever any of the terms of this Agreement said improvements shall be made by the Company. (sic)

Section 2. The Company agrees not to enter into any agreement or contract with his employees, individually or collectively, which in any way conflicts with the terms and provisions of this agreement. Any such agreement shall be null and void.

ARTICLE XIX GENERAL PROVISIONS

Section 1. *Successors Clause.* This Agreement and Supplemental Agreements hereto hereinafter referred to collectively as "Agreement", shall be binding upon the parties hereto, their successors, administrators, executors and assigns.

It is understood by this Section that the parties hereto shall not use a third party to evade this Agreement. The Employer shall give notice of the existence of this Agreement to any purchaser, transferee, lessee, assignee, etc., of the operation covered by this Agreement or any part thereof. Such notice shall be in writing with a copy to the Local Union, at the time the seller, transferee, or lessor executes a contract or transaction as herein described. The Local Union shall also be advised of the exact nature of the transaction, not including financial details.

Section 2. *No Strike and No Lockout.* Except as provided for in Article V, during the period of time that this Agreement is in force and effect, there shall not be a strike by the Union or lockout by the Company.

Section 3. *Inspection of Payroll Records.* The Company agrees to make available for inspection within five (5) days after written request by the Union, its payroll records with respect to any employee covered by this Agreement about whom (Page 27) a specific grievance has been filed. The Company shall not be considered as having violated the terms of this agreement should it refuse a request for such inspection before the opening of its business hours or after the close thereof, or on a Saturday, Sunday, or Holiday. The Company agrees to

open its payroll records with respect to the employees covered herein, when the Union by an independent audit, have (sic) reason to believe that the contract has or is being violated.

Section 4. *Examinations.* Physical, mental, or other examination required by a city, state or federal government body, or by the Company shall be promptly complied with by all employees; provided, however, the Company shall pay for all such examinations. Examinations are to be taken at the Employee's home terminal and are not to exceed one in any one (1) year, unless otherwise required by law, rule or regulation of any city, state or federal governmental regulatory body.

The Company reserves the right to select its own medical examiner or physician, and the Union may, if in its opinion it thinks an injustice has been done to an employee, have said employee re-examined at the Union's expense.

Section 5. *Employee Liability for Loss or Damage.* Employees may be charged for loss or damage to equipment or to household goods if the damages result from violation of the Company instructions, from lack of precautions, which a person of the same or similar experience would be expected to observe, or in spite of previous warnings or reprimands in regard to the same or similar circumstances.

Section 6. *Unsafe Equipment.* No employee shall be compelled to take out equipment that is not mechanically sound and properly equipped to conform with all applicable city, state and federal regulations.

Section 7. *No Unauthorized Riders.* No driver shall allow anyone other than employees of the Company who are on duty to ride on his truck, except with the written authorization of the Company.

Section 8. *Post Contract.* A copy of this Agreement shall be posted in a conspicuous place.

(Page 28) Section 9. *Union Responsibility.* The Union has responsibilities to the moving industry. It pledges to use all its available resources to enforce this contract agreement, make efforts to organize, support efforts to insure a full day's work by its members, create good relations between the Company and the Union. The Union will further try to inform the Public as to who the Union Moving and Storage Companies are.

ARTICLE XX LEAVES OF ABSENCE

Section 1. Any employee desiring leave of absence from his employment shall secure written permission from both the Union and the Company upon his making written application therefor, stating the reason for the leave if requested. An initial leave of absence shall be for thirty (30) days and may be extended for like periods, not to exceed ninety (90) days. Permission for same must be secured from both the Union and the Company. During the period of absence, the employee shall not engage in gainful employment within the industry. Failure to comply with this provision or misrepresentation of the reason for the leave shall result in the complete loss of seniority rights for the employees involved. Inability to work because of proven sickness or injury shall not result in the loss of seniority rights.

Section 2. *Funeral Leave.* An employee shall be paid for any absence from his scheduled work day, Monday through Friday, made necessary to attend the funeral on account of death in the immediate family, up to and including a maximum of three (3) such days, on the basis of eight (8) hours at straight time for each day of such absence. For the purpose of this article, immediate family means mother, father, spouse, brother, sister, a child of the employee, and mother-in-law, father-in-law, brother-in-law, and sister-in-law. The Company may request proof of the bona-fide nature of the necessary absence, including the occurrence of the death, the relationship of the employee to the deceased, and the employee's attendance at the funeral.

(Page 29) Section 3. *On-Job-Injury.* When an employee is unable to complete his day's work because of injury in the line of duty, he is to receive for the balance of the day, an amount equal to the employee's straight time hourly rate for each hour lost. Where an employee is required to go to the doctor during working hours because of injury arising out of his employment that same day, and would thereby lose working time, such visit shall be on the Employer's time.

ARTICLE XXI JURY AND ELECTION DUTY

Section 1. *Jury Duty:* When regular employees covered by this Agreement are called upon for jury duty, they shall promptly advise their Employment upon receipt of such call, and, if taken from their work for such service, shall be paid eight (8) hours' pay at their regular hourly rate less pay received from above duty, for each day of absence from work occasioned thereby. A

maximum of ten (10) days jury duty will be allowed during the life of this Agreement.

Section 2. *Elections—Voting Time:* The Employer agrees to respect and observe the present law as its (sic) pertains to giving employees time off to vote.

ARTICLE XXII MISCELLANEOUS PROVISIONS

1. The Union shall have the right to post union notices or notices of social gatherings on the bulletin boards furnished by the Company for the exclusive use of the Union.

2. A seniority list of regular employees arranged in the order of their dates of employment shall be displayed on the bulletin board at all times.

3. Should the Employer require any employee to be bonded, any premium involved shall be paid by the Employer.

4. Should the Company find it necessary to require employees to carry a record of full personal identification, such requirement shall be complied with by the employees. The cost of such personal identification shall be paid for by the Company.

5. If the Company requires its employees to wear uniforms, the Company shall pay the cost of the same. It shall be the duty of the employees to keep the uniforms clean.

(Page 30) ARTICLE XXIII TERMINATION

This Agreement shall become effective as of the first day of March, 1979, and shall remain in full force and ef-

fect until the 28th day of February, 1982, and each year thereafter, unless written notice of termination or desired modification is given at least sixty (60) days prior to any yearly expiration date by either of the parties hereto.

Should notice of termination or desired modification be given in the manner provided for above, the party desiring the same shall:

1. Offer to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modification.

2. Notify the Federal Mediation and Conciliation service within thirty (30) days after such notices of the existence of a dispute, and simultaneously therewith notify any state agency established to mediate disputes within the state provided no agreement has been reached by that time.

3. Continue in full force and effect, without resorting to strike or lock-out, all the terms and conditions of this agreement for a period of sixty (60) days after such notice is given or until the expiration date of this contract, whichever occurs later. In the process of bargaining in good faith, for a new contract or a contract containing the desired modifications, the parties recognize the fact that it may be necessary to continue their negotiations after the date upon which this agreement legally terminates and in order to provide for their duties and obligations for the period of time between the termination date of this contract and the date upon which they conclude a new contract or one containing the desired modifications, it is understood and agreed as follows:

1. The parties shall continue to bargain and negotiate in good faith in an effort to reach a complete agreement and understanding covering the terms and provisions of a new contract to take the place of this one or a contract containing the desired modifica-

tions, and such negotiations shall continue until either a complete agreement and understanding is reached or until either or both parties conclude that it is not probable that further negotiations will result in agreement.

2. All of the terms and provisions of this contract shall be continued in full force and effect and extended from the termination date hereof to such time as the parties either enter into a new agreement or agreement (sic) containing the desired modifications, or terminate further negotiations in the manner above mentioned.

3. Should the parties reach an agreement upon the terms and provisions of a new contract or a contract containing the desired modifications, at a time subsequent to the termination date of this contract, then, in such event all of the terms and provisions of the new contract, or the contract containing the desired modifications, shall be made retroactive to the termination date of this contract.

The Post Office Address of the Company is:

COMPANY: Prossers Mov. & Stg. Co.
2719 Delmar
St. Louis, Mo.

The Post Office Address of the Union is:

UNION: Miscellaneous Drivers and Helpers
Local No. 610
300 South Grand Boulevard
St. Louis Missouri, 63103

IN WITNESS WHEREOF, the parties hereto have signed and executed this and several other copies hereto the day and year hereafter noted.

COMPANY: Prossers Mov. & Stg. Co.
By /s/ Patrick Prosser
TITLE: Pres
DATE: 5/22/79

MISCELLANEOUS DRIVERS AND H E L P E R S UNION, LOCAL NO. 610, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

BY: /s/ Jerry Husgen
TITLE: Business Representative
DATE: 5-22-79

EMPLOYEES COMMITTEE:

Roger Goray, Unit Chairman
Lynn Boyer, Unit Recording Secretary
Richard Utley
Roy Williams
Richard Knupp

(Rec'd C. S. Contract Dept., May 31, 1979)

PROSSER'S MOVING & STORAGE CO.
2719 Delmar Blvd. St. Louis, Mo. 83103/
Phone: 652-2250

PROSSER'S MOVING & STORAGE COMPANY
SENIORITY LIST 5/22/79

CALVIN PERKINS	7/17/62
CHARLES CRAWFORD	4/10/70
DANIEL MOTHERWAY	6/13/70
JESSE PIGG	1/16/71
LAWRENCE WICKS (Owner Operator)	5/ 9/66
LEON BOWENS (Owner Operator)	3/12/70

MISCELLANEOUS DRIVERS & HELPERS,
LOCAL UNION No. 610

300 South Grand • • St. Louis, Mo. 63103

Telephone: 533-9030

Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America

John Metz
Secretary-Treasurer

July 20, 1979

Mr. Jim Lenihan - Mgr., Contract Department
Central States SE & SW Areas
Health & Welfare and Pension Funds
8550 West Bryn Mawr Avenue
Chicago, Illinois 60631

Dear Mr. Lenihan:

Enclosed you will find signed Modifications of Agreement for the following moving companys:

Emil Grass Moving and Storage
Prossers Moving and Storage
A. Herpers Moving Co.

We would appreciate anything you can do to speed up the billing for increased health and welfare benefits to these companies.

If you have any questions please call me at 314-533-3427.

Very truly yours,

TEAMSTERS LOCAL UNION 610
/s/ Jerry Husgen
Business Representative

JH/sg

(Rec'd C. S. Contract Dept., July 21, 1979)

MODIFICATION OF AGREEMENT

Agreement of Modification effective March 1, 1979 to February 28, 1982, by and between Prosser Moving & Storage Co. or its successors and Miscellaneous Drivers and Helpers Local No. 610 with reference to contributions to the Central States, Southeast and Southwest Areas Health and Welfare Fund.

The parties hereto agree to modify Article XV, Section 1, as follows:

Section 1. Effective March 1, 1979, the Employer shall contribute to the Central States, Southeast and Southwest Areas Health and Welfare Fund, which is to be administered jointly by the parties thereto, the weekly sum specified in the following schedule for each Employee covered by this Agreement who has been on the payroll Ninety (90) days or more; Effective March 1, 1979, $29.50 Per Week, Effective March 1, 1980, $29.50 per week, Effective March 1, 1981, $36.50 per week. These amounts are required by the Central States, Southeast and Southwest Areas Health and Welfare Fund to maintain the highest Health and Welfare Program.

All other terms and conditions of the signed Agreement shall remain in full force and effect.

COMPANY

By: /s/ Patrick Prosser
Title: Pres.

UNION

By: Teamsters Local 610
/s/ Jerry Husgen
Title: Business Representative

(Rec'd C. S. Contract Dept., July 21, 1979)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Civil Cause No. 80-0379-C(B)

LORAN W. ROBBINS, *et al.*,

Plaintiffs,

vs.

PROSSER'S MOVING AND STORAGE COMPANY,
a Missouri corporation,

Defendant.

ANSWER

(Filed May 8, 1980)

Defendant, Prosser Moving and Storage Company, for its Answer to the Complaint states as follows:

1. Defendant denies each and every allegation set forth in paragraph 1 of the Complaint.

2. Defendant admits each and every allegation set forth in paragraphs 2 through 5 of the Complaint.

3. Defendant is without knowledge or information sufficient to form a belief as to the truthfulness and genuineness of Exhibits 1 through 6 to plaintiffs' Complaint and therefore denies same. Except as so denied, defendant admits the allegations of paragraphs 6, 7 and 8 of the Complaint.

4. Defendant denies each and every allegation set forth in paragraphs 9, 10 and 11 of the Complaint.

5. Further answering, defendant, for its first defense, states that this Court lacks subject matter juris-

diction over the claims and controversy raised in the Complaint in that plaintiffs have failed to exhaust inter contractual remedies of grievance and arbitration procedures as provided in the collective bargaining agreements.

6. Further answering, defendant, for its second defense, states that the matters at issue herein, and the interpretation of the collective bargaining agreements determinative of same, are subject to arbitration under said collective bargaining agreements, and that plaintiffs, themselves or on their behalf, or as third party beneficiaries under the collective bargaining agreements, have failed to allege that said arbitration procedures have been exhausted, and in fact plaintiffs have failed to exhaust their administrative remedies. The Complaint should therefore be dismissed in that (a) this Court lacks subject matter jurisdiction over the matters alleged therein; (b) the suit is premature and not ripe for judicial determination and (c) the Complaint fails to state a claim upon which relief can be granted.

7. Further answering, defendant, for its third defense, states that on or about April 19, 1977, Local 610 Union (sic), affiliated with Teamsters, Chauffers (sic), Warehousemen and Helpers of America, a labor organization, (hereinafter referred to as "Union"), made demand upon defendant for an audit of the company's payroll records pursuant to the terms of the collective bargaining agreement dated March 1, 1976; thereafter, Union filed a charge with the National Labor Relations Board (NLRB) alleging, *inter alia*, an unfair labor practice by reason of the defendant's refusal to allow an audit of said records, which charge was deferred and subsequently dismissed on January 4, 1978, after Union informed the NLRB that

it did not intend to invoke the contractional provisions providing for arbitration. Plaintiffs, acting through their representative and agent, Union, by submitting to the jurisdiction of the NLRB, is estopped from now asserting its claims as alleged in the Complaint herein.

8. Further answering, defendant, for its fourth defense, states that Union, which has not been joined in this action, is a person needed for a just adjudication within the meaning of Rule 19, F.R.Civ.P., in that Union was and is a party to the collective bargaining agreements and the exclusive bargaining agency for the employees of defendant and beneficiaries of plaintiffs' Trust funds. This action cannot in good conscience and equity be permitted to proceed in Union's absence, in that no final judgment can be entered which will do justice between the parties without injuriously affecting Union's and defendant's rights, and failure to join Union will subject defendant to a substantial risk of incurring inconsistent obligations to the plaintiffs and Union, therefore, the Complaint should be dismissed for failure to join an indispensable party.

9. Further answering, defendant, for its fifth defense, states that plaintiffs are not entitled to maintain this suit for an accounting under the collective bargaining agreement dated March 1, 1976 effective to February 26, 1979 in that plaintiffs have waived their rights under said contract by failing to exercise said rights prior to the collective bargaining agreement's expiration.

10. Further answering, defendant, for its sixth defense, states that plaintiffs have failed to seek a determination of their alleged rights during the term of the collective bargaining agreement dated March 1, 1976, which

expired February 26, 1979, that defendant has relied upon plaintiffs' acquiescence and delay to its detriment, and plaintiffs are thereby estopped, and barred by the doctrine of laches, from now maintaining this suit based upon purported acts of the defendant allegedly constituting a breach of the rights of plaintiffs under said collective bargaining agreement.

11. Further answering, defendant, for its seventh defense, states that the Complaint fails to state a claim against defendant upon which relief can be granted.

WHEREFORE, having fully answered, defendant prays that the Complaint be dismissed with prejudice, and for its costs.

UTHOFF AND WURMSER

By: /s/ Bruce M. Wurmser M.B.E. 24285
Gary S. Uthoff M.B.E. 22225
1015 Locust St., Suite 420
St. Louis, Missouri 63101
621-9550

Attorneys for Defendant

/s/ Charles W. Bobinette M.B.E. 23550
1015 Locust St., St. Louis, Mo. 63101
621-4150

Attorney for Defendant

(Certificate of Service omitted in printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Civil Cause No. 80-0379C(B)

LORAN W. ROBBINS, *et al.*,
Plaintiffs,

vs.

PROSSER'S MOVING AND STORAGE COMPANY,
a Missouri corporation,
Defendant.

DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION, OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

(Filed September 2, 1980)

Comes now defendant, Prosser Moving and Storage Company, and for its Motion to Dismiss Plaintiff's Complaint for Lack of Subject Matter Jurisdiction and For Summary Judgment pursuant to Rules 12(h) (3) and 56, Federal Rules of Civil Procedure, states:

1. Plaintiffs, trustees for the Central States Pension Fund and Health and Welfare Fund, have filed a Complaint herein against defendant seeking an accounting and money damages for alleged past non-contribution to the funds by defendant.

2. Plaintiffs' Complaint alleges jurisdiction of their claims based on two grounds:

(A) Section 301(a) of the Labor Management Relations Act of 1947, as amended, (29 U. S. C. Section 185 (a)); and

(B) Section 502 of the Employee Retirement Income Security Act of 1974, (29 U. S. C. Section 1132).

3. Section 301(a) of the Labor Management Relation Act of 1947, as amended (29 U. S. C. Section 185(a)) provides jurisdiction to this Court for claims arising from a breach of a collective bargaining agreement (herein alleged); however, intra contractual remedies must first be exhausted via the grievance and arbitration procedures before judicial relief can be sought.

4. The collective bargaining agreements (attached to Plaintiffs' Complaint as Exhibits 1 and 2 and covering the period of time relevant hereto) each provide a compulsory arbitration procedure to resolve disputes involving the issues raised by plaintiffs' Complaint; plaintiffs are therefore required to submit their claims to arbitration before instituting suit.

5. Plaintiffs fail to state in their Complaint that they have sought or exhausted the arbitration procedures under the aforesaid collective bargaining agreements; plaintiffs in fact have not sought nor exhausted said arbitration procedures.

6. Section 502 of the Employee Retirement Income Security Act of 1974 (29 U. S. C. Section 1132) creates a federal civil action and provides jurisdiction to beneficiaries and participants of a plan for legal relief, and jurisdiction to fiduciaries, such as plaintiffs, for equitable relief.

7. Section 502 of the Employee Retirement Income Security Act of 1974 (29 U. S. C. Section 1132) did not preempt or modify the presumptive preference for arbi-

tration under the National Labor Relations Act nor prevent contracting parties from agreeing that intra contractual grievance and arbitration procedures be exhausted before seeking judicial relief; plaintiffs are therefore required to submit their claims to arbitration before instituting suit.

8. This Court therefore lacks subject matter jurisdiction over plaintiffs' Complaint, or in the alternative, summary judgment in favor of defendant should be granted on plaintiffs' Complaint.

WHEREFORE, defendant moves this Court to dismiss plaintiffs' Complaint for lack of subject matter jurisdiction, or in the alternative to grant summary judgment in favor of defendant on plaintiffs' Complaint.

UTHOFF AND WURMSER

By /s/ Bruce M. Wurmser, M.B.E. 24285
1015 Locust Street, Suite 420
St. Louis, Missouri 63101
621-9550

Attorneys for Defendant

/s/ Charles W. Bobinette, Esq. by BMW
1015 Locust Street, Suite 1140
St. Louis, Missouri 63101
621-4150

Attorney for Defendant

(Certificate of Service omitted in printing.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Civil Cause No. 80-0379-C(B)

LORAN W. ROBBINS, *et al.*,

Plaintiffs,

vs.

PROSSER'S MOVING AND STORAGE COMPANY,
a Missouri corporation,

Defendant.

AFFIDAVIT IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

I, Patrick M. Prosser, being duly sworn upon my oath, state:

1. I am the President of the named defendant, Prosser Moving and Storage Company, a Missouri corporation.

2. On or about May 2, 1976, in my capacity as President of defendant, I executed a Collective Bargaining Agreement with Miscellaneous Drivers and Helpers, Local Union No. 610, covering a period between March 1, 1976 through February 26, 1979. A copy of said agreement is attached to plaintiffs' Petition as Exhibit No. 1.

3. On or about April 20, 1977, I received a letter dated April 19, 1977 from Mr. Clyde Craig, attorney for Local No. 610 demanding an inspection of the company's payroll records and an audit of the company's records to

determine whether the collective bargaining agreement had been breached by the company's failure to provide to certain employees seniority and "other" benefits provided by the contract. A copy of this letter is attached hereto and marked Exhibit A to this Affidavit.

4. After the company would not agree to allow an inspection and audit of its payroll records, the union, Local 610 filed a complaint with National Labor Relations Board charging a violation of Sections 8(a) and (5) of the Labor Management Relations Act.

5. On or about July 22, 1977, the National Labor Relations Board declined to issue a complaint on the union charge, stating for its reasons that Prosser Moving and Storage was willing to arbitrate the dispute and that said dispute was within the scope of the arbitration procedure. A copy of the N. L. R. B. decision is attached hereto and marked Exhibit B, and made a part of this Affidavit.

6. On or about January 4, 1978, the National Labor Relations Board dismissed the charge of union Local 610 because the union did not intend to submit the issue to arbitration. A copy of the N. L. R. B. decision is attached hereto and marked as Exhibit C, to this Affidavit.

Further, I sayeth not.

/s/ Patrick H. Prosser

State of Missouri)
County of St. Louis) ss.

Before me this 24th day of September, 1980, personally appeared Patrick H. Prosser, personally known to me, who, having been duly sworn upon his oath, stated that the matters set forth in his foregoing Affidavit are true

and correct to the best of his knowledge, information and belief.

/s/ Bruce M. Wurmser
Notary Public

My commission expires: Bruce M. Wurmser, Notary Public—State of Missouri, St. Louis County. My Commission expires Sept. 24, 1983.

UTHOFF, WURMSER AND GRAEBER

By /s/ Bruce M. Wurmser M. B. E. 24285
1015 Locust Street - Suite 420
St. Louis, Missouri 63101
621-9550

Attorneys for Defendant

Charles W. Bobinette, Esq.
1015 Locust Street—Suite 1140
St. Louis, Missouri 63101
621-4150

Attorney for Defendant

(Certificate of Service omitted in printing.)

EXHIBIT A

WILEY, CRAIG, ARMBRUSTER, WILBURN & MILLS

Attorneys and Counselors

John T. Wiley
Harry H. Craig
Norman W. Armbruster
Earl B. Wilburn
Richard D. Mills
Clyde E. Craig
Barbeau A. Roy

Suite 717 Buder Building
Market Street at Seventh

St. Louis, Missouri 63101

Area Code 314
231-1018

April 19, 1977

Prossers Moving
2719 Delmar
St. Louis, Missouri 63103

Gentlemen:

This is to inform you that Teamsters Local Union No. 610 has reason to believe that its contract with your company has or is being violated by employment of persons in classifications covered by the contract without providing to such persons seniority and other benefits provided by the contract.

Pursuant to the provisions of Section 20.14 of the contract the Union requests that the company make available for inspection its payroll records with respect to employees covered by the contract. The audit will be conducted by Dwyer, Costello & Company, and the company will be supplied with the results of the audit upon its completion. The Union's auditor will cooperate with the company in every way possible to insure that there is no substantial inconvenience or disruption of the normal operation of your business.

Please contact the undersigned upon receipt of this letter so that mutually satisfactory arrangements may be made for the audit. Thank you in advance for your anticipated cooperation.

Very truly yours,
/s/ Clyde E. Craig

CEC/kmk

cc: Mr. Glen Boyer
Business Representative
Teamsters Local Union No. 610
300 South Grand Blvd.
St. Louis, Missouri 63103

Mr. Jack Dwyer
Dwyer, Costello & Company
812 North Third Street
St. Louis, Missouri 63102

EXHIBIT B

NATIONAL LABOR RELATIONS BOARD
REGION 14

Room 448, 210 North 12th Boulevard
St. Louis, Missouri 63101 Telephone 425-4166
July 22, 1977

Re: Prossers Moving
Case No. 14-CA-10329

Prossers Moving
Attn: Frank Murphy
Operations Manager
2719 Delmar
St. Louis, Missouri 63103

Mr. Clyde E. Craig
Attorney at Law
7 North Seventh Street
St. Louis, Missouri 63101

Gentlemen:

In accordance with the National Labor Relations Board's decision in *Collyer Insulated Wire,* 192 NLRB 837, and pursuant to "Arbitration Deferral Policy Under *Collyer* - Revised Guidelines" publicly issued by the General Counsel on May 10, 1973, I am declining to issue a complaint on the instant charge based on my determination that further proceedings on the charge should be administratively deferred for arbitration.

My reasons for deferring the charge are as follows:

1. The charge alleges a violation of Section 8(a) (1) and (5) relating to an alleged refusal to furnish information relevant to the administering of the collective-bargaining agreement between the Employer and the Charging Party.

2. The question of whether there has been a refusal to furnish such information constituting a failure to bargain collectively is a matter apparently within the substantive provisions of the collective-bargaining agreement in effect between the Union and the Employer and is a question which may be resolved by an arbitrator under the terms and conditions of the agreement.

Prossers Moving
Case No. 14-CA-10329 July 22, 1977

3. On July 20, 1977, this office was notified by Employer Prossers Moving that it is now, and for a reasonable period of time has been, willing to arbitrate the dispute underlying the charge in the above-captioned case, notwithstanding any contractual time limits on filing or processing to arbitration of such grievance or the subsequent expiration of the contract.

4. The grievance procedure of the collective-bargaining agreement currently in effect between the Union and the Employer provides for arbitration and makes the results reached in arbitration procedure binding on the parties.

Under Section 102.19 of the National Labor Relations Board's Rules and Regulations, the charging party may obtain a review of my administrative determination to defer further proceedings on this charge by filing an appeal with the General Counsel addressed to the Office of Appeals, National Labor Relations Board, Washington, D. C. 20570, addressing a copy of the appeal to this Office. This appeal must contain a complete statement of the facts and reasons on which it is based. The appeal must be received by the General Counsel in Washington, D. C., by 5:00 p. m. on August 4, 1977. For good cause shown, however, the General Counsel may grant special permission to extend

the time for filing. A request for an extension of time to file an appeal must be in writing and received by the Office of Appeals prior to August 4, 1977; a copy of such request should be filed with this Office. If the General Counsel determines that deferral of this charge to arbitration is unwarranted, the case will be remanded to me for appropriate action. But if the General Counsel sustains my decision, the case will be remanded to me for deferral as set forth herein.

It is also my intention to inquire as to the status of this dispute periodically, and no later than 90 days hence, and to accept and consider at any time requests and supporting evidence submitted by any party to this matter for dismissal of the charge, for continued deferral of administrative action on the charge, or for issuance of a complaint.

It is my intention to dismiss the charge in the event the charging party does not promptly submit the dispute underlying the charge to the contract arbitration procedures, or in the event the charging party notifies me in writing that it does not intend to submit the dispute to arbitration.

It is my intention to revoke my decision to defer and to resume processing of the charge in the event the respondent, by conduct inconsistent with its expression of a willingness to arbitrate, prevents or impedes the prompt resolution of the underlying dispute through the contract grievance-arbitration procedures.

Prossers Moving
Case No. 14-CA-10329 July 22, 1977

If the dispute underlying the charge is not resolved amicably under the grievance procedure, and resort to arbitra-

tion proves necessary, the charging party may obtain a review of the arbitrator's final award by addressing a request for review to this Office. The request should be in writing and contain a statement of the facts and circumstances bearing on whether the arbitral proceedings were fair and regular; whether the unfair labor practice issues which gave rise to the charge were considered and decided by the arbitrator; and whether the award is consonant with the purposes and policies of the Labor Management Relations Act. *Spielberg Mfg. Co.*, 112 NLRB 1080.

Very truly yours,

/s/ Joseph H. Solien
Regional Director

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

cc: General Counsel
Office of Appeals
National Labor Relations Board
Washington, D. C. 20570

Miscellaneous Drivers and
Helpers Union, Local 610
300 South Grand Blvd.
St. Louis, Missouri 63103

smz

EXHIBIT C

NATIONAL LABOR RELATIONS BOARD
Region 14
Room 448, 210 North 12th Boulevard
St. Louis, Missouri 63101 Telephone 425-4173
January 4, 1978

Re: Prossers Moving
Case No. 14-CA-10329

Mr. Clyde E. Craig
Attorney at Law
7th North Seventh St.
St. Louis, Missouri 63103

Dear Mr. Craig:

By letter dated July 22, 1977, the undersigned administratively deferred further action on the charge in the above matter for arbitration of the underlying dispute pursuant to the grievance-arbitration procedures of the applicable collective-bargaining agreement. The undersigned stated in said letter that it was his intention to dismiss the charge in the event the charging party did not promptly submit the dispute underlying the charge to the contract arbitration procedure, or in the event the charging party stated in writing that it did not intend to submit the dispute to arbitration.

As the charging party informed this office on December 19, 1977, that it does not intend to invoke the contractual provisions providing for arbitration, I am, therefore, dismissing the charge in the above-captioned case.

Pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, you may obtain a review of this action by filing an appeal with the General Counsel addressed to the Office of Appeals, National Labor Relations Board, Washington, D. C. 20570 and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D. C. by the close of business on January 17, 1978. Upon good cause shown, however, the General Coun-

sel may grant special permission for a longer period within which to file. Any request for extension of time must be submitted to the Office of Appeals in Washington, and a copy of any such request should be submitted to me.

Prossers Moving
Case No. 14-CA-10329 January 4, 1978

If you file an appeal, please complete the notice forms I have enclosed with this letter and send one copy of the form to each of the other parties. Their names and addresses are listed below. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity for filing the appeal itself with the General Counsel and a copy of the appeal with the Regional Director within the time stated above.

Very truly yours,

/s/ Joseph H. Solien
Regional Director

Enclosures

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

cc: General Counsel
Office of Appeals
National Labor Relations Board
Washington, D. C. 20570

Prossers Moving
Attn: Frank Murphy, Operations Mgr.
2719 Delmar
St. Louis, Missouri 63103

Miscellaneous Drivers and Helpers
Union, Local 610
300 South Grand
St. Louis, Missouri 63103

smz